

1 summary judgment be granted Plaintiff's retaliation and state law negligence claims, but
2 denied on his Eighth Amendment medical indifference claim against Defendant Isira.

3 Defendant Isira objected to the recommendation to deny summary judgment on
4 the Eighth Amendment claim. (ECF No. 117.) Plaintiff responded to Isira's objections.
5 (ECF No. 118.) Defendant Isira points to evidence indicating that he did not act with
6 deliberate indifference toward Plaintiff. However, Plaintiff has presented contrary
7 evidence indicating that Defendant acted purposefully and maliciously against Plaintiff.
8 The Magistrate Judge properly concluded that such disputes of fact cannot be resolved
9 on summary judgment. Nor can the Court conclude that Defendant is entitled to qualified
10 immunity where the evidence raises an issue of fact regarding whether Defendant
11 purposefully and maliciously denied Plaintiff appropriate care. Defendant Isira's
12 objections do not raise an issue of fact or law under the findings and recommendations.

13 Plaintiff objected to the recommendation to grant summary judgment on the
14 remaining claims. (ECF No. 120.) Defendants filed a response. (ECF No. 121.) Plaintiff's
15 objections are lengthy and reiterate arguments raised in his opposition to the motion for
16 summary judgment. The Court concludes that these arguments do not raise an issue of
17 fact or law under the findings and recommendations.

18 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has
19 conducted a de novo review of this case. Having carefully reviewed the entire file, the
20 Court finds the findings and recommendation to be supported by the record and by
21 proper analysis.

22 Accordingly, it is HEREBY ORDERED that:

- 23 1. The Court adopts in full the findings and recommendations filed September
24 30, 2016 (ECF No. 115);
- 25 2. Defendants' motion for summary judgment (ECF No. 74) is GRANTED IN
26 PART AND DENIED IN PART as follows:
 - 27 a. Summary judgment is granted in favor of all Defendants on
28 Plaintiff's First Amendment retaliation claim,

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b. Summary judgment is granted in favor of Defendant Isira on Plaintiff's state law negligence claim, and

c. Summary judgement is denied on Plaintiff's Eighth Amendment claim against Defendant Isira.

3. The matter will proceed solely on Plaintiff's Eighth Amendment claim against Defendant Isira for inadequate medical care.

4.

IT IS SO ORDERED.

Dated: December 14, 2016

/s/ Lawrence J. O'Neill
UNITED STATES CHIEF DISTRICT JUDGE

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