UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CASE NO. 1:12-cv-00860-LJO-MJS (PC)

ORDER ADOPTING FINDINGS AND RECOMMENDATIONS TO GRANT IN PART AND DENY IN PART DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT

(ECF No. 115)

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983. The action proceeds against Defendants Garcia, Goss, Trevino, Isira, and Coffin on Plaintiff's First Amendment retaliation claim, and against Defendant Isira on Plaintiff's Eighth Amendment medical indifference and state law negligence claims. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302 of the United States District Court for the Eastern District of California.

On September 30, 2016, the Magistrate Judge issued findings and recommendations to grant in part and deny in part Defendants' motion for summary judgment. (ECF No. 115.) Specifically, the Magistrate Judge recommended that

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

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

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

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

Accordingly, it is HEREBY ORDERED that:

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

1	b. Summary judgment is granted in favor of Defendant Isira on
2	Plaintiff's state law negligence claim, and
3	c. Summary judgement is denied on Plaintiff's Eighth Amendment
4	claim against Defendant Isira.
5	3. The matter will proceed solely on Plaintiff's Eighth Amendment claim
6	against Defendant Isira for inadequate medical care.
7	4.
8	IT IS SO ORDERED.
9	Dated: December 14, 2016 /s/ Lawrence J. O'Neill UNITED STATES CHIEF DISTRICT JUDGE
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