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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MICHAEL LOUIS FOSTER,

 Plaintiff,

 v.

A. ENENMOH,

 Defendant.

Case No. 1:08-cv-01849-LJO-SKO PC

ORDER ADOPTING FINDINGS AND
RECOMMENATIONS, GRANTING
MOTION FOR LEAVE TO FILE AMENDED
DECLARATIONS, AND DENYING
MOTION FOR SUMMARY JUDGMENT

(Docs. 74, 87, and 92)

Plaintiff Michael Louis Foster, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on December 3, 2008. This action is proceeding on Plaintiff’s second amended complaint, filed on September 17, 2009, against Defendant Enenmoh for violation of the Eighth Amendment of the United States Constitution. Plaintiff’s claim arises out of the alleged denial of medical care.

The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. On August 1, 2013, the Magistrate Judge filed a Findings and Recommendations which was served on the parties and which contained notice to the parties that Objections were to be filed within twenty days. Defendant filed an Objection on August 21, 2013. Local Rule 304(b).

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 Recommendations to be supported by the record and by proper analysis.

1 It is not the function of the Court to assess the credibility of witnesses or weigh the
2 evidence, and the Court declines Defendant's invitation to do so. *Soremekun v. Thrifty Payless,*
3 *Inc.*, 509 F.3d 978, 984 (9th Cir. 2007). Plaintiff's testimony that his condition caused him severe
4 pain may *not* be dismissed or discounted on the basis that there exist contradictory medical
5 records, *see Dominguez-Curry v. Nevada Transp. Dept.*, 424 F.3d 1027, 1035-36 (9th Cir. 2005)
6 (witness credibility is exclusively within the province of the factfinder at trial), and Plaintiff is
7 competent to testify regarding his health problems to the extent medical expertise is not required,
8 Fed. R. Evid. 701, 702. Finally, it is impermissible for a prisoner to be denied medical care for
9 reasons unrelated to the prisoner's medical needs. *Snow v. McDaniel*, 681 F.3d 978, 987 (9th Cir.
10 2012); *Jett v. Penner*, 439 F.3d 1091, 1097 (9th Cir. 2006); *Jones v. Johnson*, 781 F.2d 769, 771
11 (9th Cir. 1986). The Magistrate Judge made a clear, detailed record on the issues before the Court,
12 and Defendant's arguments that the Magistrate Judge committed error are unpersuasive.

13 Accordingly, IT IS HEREBY ORDERED that:

- 14 1. The Findings and Recommendations are adopted in full;
- 15 2. Defendant Enenmoh's motion to file amended declarations, filed on December 6,
16 2012, is GRANTED;
- 17 3. Defendant Enenmoh's motion for summary judgment, filed on October 1, 2012, is
18 DENIED; and
- 19 4. This matter is referred back to the Magistrate Judge to be set for jury trial.

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22 IT IS SO ORDERED.

23 Dated: September 26, 2013

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

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