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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

PATRICK KUNKEL,

Plaintiff,

v.

N. DILL, et al.,

Defendants.

CASE NO. 1:09-cv-00686-LJO-BAM PC

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND GRANTING IN
PART AND DENYING IN PART
DEFENDANTS’ MOTION FOR SUMMARY
JUDGMENT

(ECF Nos. 130, 139, 140, 151, 160)

Plaintiff Patrick Kunkel (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on the [first amended complaint](#), filed October 8, 2009, against Defendants Garcia, Mendoza, Araich, Mackey, Robaina, Dileo, Dill, Pfeiffer, Ali, and Zamora for deliberate indifference in violation of the Eighth Amendment. 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 October 12, 2011, Defendants Garcia, Mendoza, Pfeiffer, and Zamora filed a [motion for summary judgment](#). Plaintiff filed an [opposition](#) on December 5, 2011, and Defendants filed a [reply](#) on December 8, 2011. On March 7, 2012, the Magistrate Judge issued [findings and recommendations](#) recommending that Defendant’s Garcia, Mendoza, Pfeiffer, and Zamora’s motion for summary judgment be granted in part and denied in part. The undersigned has considered Plaintiff’s [objections](#), filed on May 18, 2012.

Plaintiff’s objections contains eighty nine pages of exhibits. To the extent that Plaintiff attempts to raise new arguments or submit new evidence in his objection, the Court declines to

1 exercise its discretion to consider Plaintiff's evidence or arguments asserted for the first time in the
2 objection to the findings and recommendations. Espinosa -Matthews v. California, 432 F.3d 1021,
3 1026 n.4 (9th Cir. 2005); United States v. Howell, 231 F.3d 615, 621-622 (9th Cir. 2000).

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

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. The findings and recommendations, filed March 7, 2012, is adopted in full;
- 9 2. Defendants' motion for summary judgment, filed October 12, 2011, is GRANTED
10 IN PART AND DENIED IN PART as follows:
 - 11 a. Defendants Mendoza, Dill, Zamora (dental claims only), and Pfeiffer's
12 motion for summary judgment is GRANTED;
 - 13 b. Defendant Garcia's motion for summary judgment is DENIED for the claims
14 arising out of the treatment provided on February 1 and 8, 2007, and
15 GRANTED on all other claims against Defendant Garcia;
- 16 3. This action is referred back to the Magistrate for further proceedings.

17 IT IS SO ORDERED.

18 **Dated: May 21, 2012**

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