

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

KEITH PAGE,

Plaintiff,

v.

LYDIA C. HENSE, et al.,

Defendants.

CASE NO. 1:10-cv-01186-AWI-SKO PC

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS IN FULL, DENYING  
DEFENDANTS' MOTION FOR SUMMARY  
JUDGMENT, GRANTING PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT IN  
PART, AND REFERRING MATTER BACK  
TO THE MAGISTRATE JUDGE TO SET FOR  
TRIAL

(Docs. 27, 30, and 41)

Plaintiff Keith Page, a former state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on July 1, 2010. This action for damages is proceeding against Defendants Ramirez and Lopez for failing to protect Plaintiff while he was incarcerated at North Kern State Prison in 2009, in violation of the Eighth Amendment of the United States Constitution.

This action was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. On January 15, 2013, the Magistrate Judge filed a [Findings and Recommendations](#) recommending that Defendants' [Motion for Summary Judgment](#) be denied and Plaintiff's [Motion for Summary Judgment](#) be granted in part. The parties were given thirty days within which to file any objections. Defendants filed an [Objection](#) on February 11, 2013, Plaintiff filed a [Response](#) on February 15, 2013, and the matter has been submitted to the undersigned. Local Rule 304(b), (d).

///

///

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

4 In their Objection, Defendants argue that the Court should decline to adopt the  
5 recommendation that Plaintiff's motion for summary judgment be granted in part, a recommendation  
6 which is based on matters being admitted pursuant to Federal Rule of Civil Procedure 36(a)(3).  
7 (Doc. 42, Obj.) Defendants represent that they timely served their responses on June 18, 2012, and  
8 they contend that they inadvertently overlooked the admissions issue raised by Plaintiff in his motion  
9 for summary judgment.

10 In response, Plaintiff submits a copy of the envelope in which the responses were served and  
11 it bears a mailing date of July 2, 2012. (Doc. 43, Resp., Ex. A.) Plaintiff contends that the Findings  
12 and Recommendations are correct and should be adopted.

13 The Magistrate Judge correctly articulated the applicable legal standard in the Findings and  
14 Recommendations. (Doc. 41, F&R, 10:11-11: 19.) Rule 36(a) requires that responses to requests  
15 for admission be timely served or the matters are deemed admitted, and the rule is self-executing.  
16 Fed. R. Civ. P. 36(a)(3). Pursuant to the parties' stipulation to an extension of time and the  
17 additional three days for mailing provided for in Federal Rule of Civil Procedure Rule 6(d), the  
18 deadline for Defendants to serve their responses by mail was June 21, 2012. (Obj., Ex. B.)  
19 Defendants did not serve their responses by mail until July 2, 2012, however, and the matters are  
20 deemed admitted as a result.

21 In conclusion, Plaintiff's evidence negates Defendants' contention that they served their  
22 responses by mail on June 18, 2012, and they are not entitled to relief from the recommendation.  
23 Accordingly, IT IS HEREBY ORDERED that:

- 24 1. The Findings and Recommendations, filed January 15, 2013, is adopted in full;
- 25 2. Defendants' motion for summary judgment, filed on July 30, 2012, is DENIED in its  
26 entirety;
- 27 3. Plaintiff's motion for summary judgment, filed on July 2, 2012, is GRANTED as to  
28 Defendant Ramirez and DENIED as to Defendant Lopez; and

1           4.       This matter is referred back to the Magistrate Judge to be set for jury trial.

2  
3 IT IS SO ORDERED.

4 Dated: February 20, 2013



\_\_\_\_\_  
SENIOR DISTRICT JUDGE