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5 **UNITED STATES DISTRICT COURT**

6 EASTERN DISTRICT OF CALIFORNIA

7 KEITH PAGE,

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

8 Plaintiff,

9 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

10 v.

11 LYDIA C. HENSE, et al.,

12 Defendants.

13 (Docs. 27, 30, and 41)

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15 Plaintiff Keith Page, a former state prisoner proceeding pro se and in forma pauperis, filed
16 this civil rights action pursuant to 42 U.S.C. § 1983 on July 1, 2010. This action for damages is
17 proceeding against Defendants Ramirez and Lopez for failing to protect Plaintiff while he was
18 incarcerated at North Kern State Prison in 2009, in violation of the Eighth Amendment of the United
19 States Constitution.20 This action was referred to a United States Magistrate Judge pursuant to 28 U.S.C. §
21 636(b)(1)(B) and Local Rule 302. On January 15, 2013, the Magistrate Judge filed a [Findings and](#)
22 [Recommendations](#) recommending that Defendants' [Motion for Summary Judgment](#) be denied and
23 Plaintiff's [Motion for Summary Judgment](#) be granted in part. The parties were given thirty days
24 within which to file any objections. Defendants filed an [Objection](#) on February 11, 2013, Plaintiff
25 filed a [Response](#) on February 15, 2013, and the matter has been submitted to the undersigned. Local
26 Rule 304(b), (d).

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1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a *de*
2 *novo* 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

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

IT IS SO ORDERED.

Dated: February 20, 2013

SENIOR DISTRICT JUDGE
