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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 ESROM MADRID,

12 Plaintiff,

13 vs.

14 MATTHEW CATES, et al.,

15 Defendants.
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1:10-cv-02136-AWI-GSA-PC

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS
(Doc. 24.)

ORDER DISMISSING ACTION, WITH
PREJUDICE, FOR FAILURE TO STATE A
CLAIM UPON WHICH RELIEF MAY
BE GRANTED UNDER SECTION 1983

ORDER THAT DISMISSAL IS SUBJECT
TO 28 U.S.C. § 1915(G)

ORDER FOR CLERK TO CLOSE CASE

20 Esrom Madrid (“plaintiff”) is a state prisoner proceeding pro se in this civil rights action
21 pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge
22 pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

23 On February 12, 2014, [findings and recommendations](#) were entered, recommending that
24 this action be dismissed based on plaintiff’s failure to state a claim upon which relief may be
25 granted under §1983. (Doc. 24.) On May 21, 2014, Plaintiff filed [objections](#) to the findings
26 and recommendations. (Doc. 27.)

27 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, this
28 court has conducted a de novo review of this case. Having carefully reviewed the entire file,

1 including plaintiff's objections, the court finds the findings and recommendations to be
2 supported by the record and proper analysis. The complaint alleges Defendants' failure to treat
3 his medical condition. Plaintiff did receive treatment, but Plaintiff claims that it was inadequate
4 to control his pain and symptoms. As explained by the Magistrate Judge, the deliberate
5 indifference doctrine required to state an Eighth Amendment claim is limited in scope.
6 Wilhelm v. Rotman, 680 F.3d 1113, 1122 (9th Cir. 2012). "Medical malpractice does not
7 become a constitutional violation merely because the victim is a prisoner." Estelle v. Gamble,
8 429 U.S. 97, 106, 97 S.Ct. 285 (1977). Further, a "difference of opinion between a physician
9 and the prisoner - or between medical professionals - concerning what medical care is
10 appropriate does not amount to deliberate indifference." Snow v. McDaniel, 681 F.3d 978, 987
11 (9th Cir. 2012), *overruled in part on other grounds by*, Peralta v. Dillard, 744 F.3d 1076, 1082-
12 83 (9th Cir. 2014); Wilhelm, 680 F.3d at 1122-23. Thus, the Court finds Plaintiff has failed to
13 state a claim for deliberate indifference to his medical needs.

14 Accordingly, THE COURT HEREBY ORDERS that:

- 15 1. The Findings and Recommendations issued by the Magistrate Judge on February
16 12, 2014, are adopted in full;
- 17 2. This action is dismissed, with prejudice, based on plaintiff's failure to state a
18 claim upon which relief may be granted under § 1983;
- 19 3. This dismissal is subject to the "three-strikes" provision set forth in 28 U.S.C. §
20 1915(g). Silva v. Vittorio, 658 F.3d 1090, 1098 (9th Cir. 2011); and
- 21 4. The Clerk of Court is directed to close this case.

22 IT IS SO ORDERED.

23 Dated: July 22, 2014

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25 SENIOR DISTRICT JUDGE
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