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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TODD KINNAMON,)	1:12cv01325 AWI DLB PC
)	
Plaintiff,)	ORDER ADOPTING FINDINGS AND
)	RECOMMENDATIONS AND DENYING
vs.)	DEFENDANTS’ MOTION FOR SUMMARY
)	JUDGMENT
C. LATIA, et al.,)	(Document 51)
)	
Defendants.)	

Plaintiff Todd Kinnamon (“Plaintiff”) is a California state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff’s May 8, 2013, First Amended Complaint against Defendants Latia¹ and Johnson for violation of the Eighth Amendment.

Defendants filed their motion for summary judgment on September 23, 2014. 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 February 12, 2015, the Magistrate Judge issued [Findings and Recommendations](#) that Defendants’ motion be denied. The Findings and Recommendations were served on the parties

¹ Defendant is sued at Defendant “Latia,” though it appears that the correct spelling is “Laita.”

1 and contained notice that any objections must be filed within thirty days. Plaintiff filed
2 “objections” on March 16, 2015, and Defendants filed [objections](#) on March 17, 2015.²

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

7 In their objections, Defendants take issue with the Court’s reliance on Plaintiff’s
8 testimony, calling it “uncorroborated and self-serving.” ECF No. 2, at 6. Defendants cite the
9 evidence in the record that they contend supports their position, and argue that Plaintiff has not
10 made an affirmative showing to support his version of events.

11 Defendants’ objections essentially ask this Court to weigh the evidence. However, the
12 Court cannot do so on summary judgment. Soremekun v. Thrifty Payless, Inc., 509 F.3d 978,
13 984 (9th Cir. 2007). Thus, while the weight of the evidence may not ultimately fall in Plaintiff’s
14 favor, it does not require that summary judgment be granted.

15 Defendants also characterize Plaintiff’s testimony as self-serving and suggest that it
16 should be discounted. However, “declarations oftentimes will be self-serving- and properly so,
17 because otherwise there would be no point in submitting them.” S.E.C. v. Phan, 500 F.3d 895,
18 909 (9th Cir. 2007) (citing United States v. Shumway, 199 F.3d 1093, 1104 (9th Cir. 1999))
19 (internal quotation marks omitted). Consequently, in most cases, the self-serving nature of the
20 declaration “bears on its credibility, not on its cognizability for purposes of establishing a
21 genuine issue of material fact.” Phan, 500 F.3d at 909 (citing Shumway, 199 F.3d at 1104)
22 (internal quotation marks omitted).

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26 ² Plaintiff’s objections did not object to the Magistrate Judge’s findings. Rather, he requested to submit “proof” of
27 the claims at issue.
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1 Accordingly, IT IS HEREBY ORDERED that:

- 2 1. The Findings and Recommendations, filed February 12, 2015, are adopted in full;
3 and
4 2. Defendants' motion for summary judgment (Document 45) is DENIED.
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6 IT IS SO ORDERED.

7 Dated: April 10, 2015

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SENIOR DISTRICT JUDGE