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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA
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9 JANICE SUGITA,
10 Plaintiff,
11 v.
12 B. PARKER, et al.,
13 Defendants.

Case No. 1:13-cv-00118-AWI-MJS (PC)

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS TO (1) GRANT
DEFENDANT SALINAS'S MOTION FOR
SUMMARY JUDGMENT, AND (2)
GRANT DEFENDANT LONGIA'S
PARTIAL MOTION FOR SUMMARY
JUDGMENT**

(ECF No. 34)

CASE TO REMAIN OPEN

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17 Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil
18 rights action brought pursuant to 42 U.S.C. § 1983. The matter was referred to a United
19 States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302 of the
20 United States District Court for the Eastern District of California.

21 On May 15, 2015, the Magistrate Judge issued findings and recommendations to
22 grant Defendant Salinas's motion for summary judgment and grant Defendant Longia's
23 partial motion for summary judgment. (ECF No. 34.) Plaintiff filed objections. (ECF No.
24 35.) Defendants filed no reply.

25 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has
26 conducted a de novo review of this case.

27 Plaintiff's objection that she exhausted administrative remedies against
28 Defendant Salinas by filing a CDCR Form 22 is without merit. As stated in the findings

1 and recommendations, Plaintiff was not required to await a response to her Form 22
2 prior to filing her grievance, nor did the filing of a Form 22 stay the time for her to file
3 such a grievance. Plaintiff has not shown compliance with the available grievance
4 process or that the process was effectively unavailable to her.

5 With respect to Defendant Longia, the Magistrate Judge concluded that there
6 was no competent evidence to refute Longia's statement that his medical decisions
7 were motivated by his medical opinions as to the best course of treatment, rather than
8 deliberate indifference. Plaintiff now contends that "Exhibit 5, page 9" and "Exhibit 7"
9 support her need for continued physical therapy and medication. However, no such
10 exhibits are included with Plaintiff's complaint, her opposition to the motion for summary
11 judgment, or her objections. Likewise, Defendants' motions for summary judgment do
12 not include an Exhibit 5 or an Exhibit 7, and the Court is unable to locate any
13 documents containing the material described by Plaintiff. Thus, no such evidence is
14 before the Court.

15 Moreover, Plaintiff describes a single statement from Exhibit 5, that a physical
16 therapist noted that Plaintiff "would benefit from additional therapy." However, there is
17 no indication that physical therapy was necessary, or that Plaintiff would not also
18 receive a benefit from the exercises that Longia had prescribed, or that there was an
19 excessive risk to Plaintiff from not continuing physical therapy. That is, the statement
20 does not reflect deliberate indifference. See Colwell v. Bannister, 763 F.3d 1060, 1068
21 (9th Cir. 2014) ("A difference of opinion between a physician and the prisoner – or
22 between medical professionals – concerning what medical care is appropriate does not
23 amount to deliberate indifference. Rather, to show deliberate indifference, the plaintiff
24 must show that the course of treatment the doctors chose was medically unacceptable
25 under the circumstances and that the defendants chose this course in conscious
26 disregard of an excessive risk to plaintiff's health.").

27 Having carefully reviewed the entire file, the Court finds the findings and
28 recommendations to be supported by the record and by proper analysis.

1 Accordingly, it is HEREBY ORDERED that:

- 2 1. The Court adopts the findings and recommendations (ECF No. 34), filed
3 May 15, 2015, in full;
- 4 2. Defendant Salinas's motion for summary judgment (ECF No. 28) is
5 GRANTED;
- 6 3. Defendant Longia's partial motion for summary judgment (ECF No. 27) is
7 GRANTED; and
- 8 4. The case shall remain open for further proceedings on Plaintiff's First
9 Amendment retaliation claim against Defendant Longia.

10 IT IS SO ORDERED.

11 Dated: June 30, 2015

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13 SENIOR DISTRICT JUDGE