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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

GORDON DALE MEADOR,  
Plaintiff,  
v.  
K. AYE, et al.,  
Defendants.

No. 1:14-cv-00006-DAD-EPG (PC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS

(Doc. Nos. 99, 127, 142)

Gordon Meador (“plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983. This action now proceeds on the First Amended Complaint, filed on September 22, 2015, against defendants Garza, Sellers,<sup>1</sup> Aye, Moon, Nguyen, Clark, Kim, and Gill (collectively, “defendants”) on plaintiff’s claim for deliberate indifference to his serious medical needs in violation of the Eighth Amendment. (Doc. Nos. 30, 36, & 38.)<sup>2</sup>

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<sup>1</sup> Defendants refer to “Sellers” as “Selliers.” Because “Sellers” is currently the name of the defendant reflected on the court’s docket, the court will use that name.

<sup>2</sup> Defendant Smith was dismissed from the case on June 30, 2016, via stipulation. (Doc. Nos. 77, 81.)

1 On November 29, 2016, defendants filed a motion for summary judgment. (Doc. No. 99.)  
2 On January 6, 2017, plaintiff filed his opposition to that motion, his declaration in support of his  
3 opposition and his statement of disputed facts. (Doc. Nos. 108; 108-1 at 177 to 108-2 at 11; 109.)  
4 On January 13, 2017, defendants filed a reply. (Doc. No. 111.) On January 27, 2017, plaintiff  
5 filed an unauthorized surreply. (Doc. No. 113.) On January 30, 2017, defendants filed a motion  
6 to strike plaintiff's surreply. (Doc. No. 114.) On February 23, 2017, plaintiff objected to  
7 defendants' motion to strike his surreply. (Doc. No. 115.)<sup>3</sup>

8 Given some confusion regarding whether plaintiff had abandoned certain aspects of his  
9 claim of deliberate indifference to a serious medical need, on March 30, 2017, the assigned  
10 magistrate judge permitted defendants to file a supplemental motion for summary judgment.  
11 (Doc. No. 121.) On April 18, 2017, defendants filed their supplemental motion for summary  
12 judgment. (Doc. No. 127.) On April 27, 2017, plaintiff filed his opposition to the supplemental  
13 motion for summary judgment. (Doc. No. 131.) On May 1, 2017, defendants filed their reply.  
14 (Doc. No. 133.) Because it appeared that plaintiff may have filed his opposition to the  
15 supplemental summary judgment motion before actually receiving a copy of it, the magistrate  
16 judge allowed him to file another opposition to the supplemental motion. (Doc. No. 134.) On  
17 May 11, 2017, plaintiff filed his second opposition to the supplemental motion for summary  
18 judgment. (Doc. No. 136.) On May 19, 2016, defendants filed their reply. (Doc. No. 138.)

19 On August 30, 2017, the assigned magistrate judge issued findings and recommendations,  
20 recommending that defendants' motion for summary judgment be granted in part and denied in  
21 part. (Doc. No. 142.) Specifically, the magistrate judge recommended that defendants be granted  
22 summary judgment with respect to plaintiff's claim that the defendants' deliberate indifference to  
23 his serious medical need caused him to contract a spinal infection in light of the fact that at  
24 summary judgment plaintiff had failed to present any evidence in support of such a claim or to  
25 counter defendants' evidence. (Doc. No. 142 at 17.) The magistrate judge also recommended  
26 that defendants Garza, Aye, Moon, Nguyen, Clark, Kim, and Gill be granted summary judgment

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27 <sup>3</sup> The magistrate judge denied defendants' motion to strike and considered plaintiff's surreply.  
28 (Doc. No. 142 at 3.)

1 in their favor with respect to plaintiff's claim that they were deliberately indifferent to his serious  
2 medical needs based upon the conclusion that on the evidence submitted on summary judgment  
3 no fair-minded jury could reasonably find that those defendants had consciously disregarded an  
4 excessive risk to plaintiff's health. (*Id.* at 27.) Finally, the magistrate judge recommended that  
5 defendants' motion for summary judgment be denied as to plaintiff's claim that defendant Sellers  
6 was deliberately indifferent to plaintiff's serious medical needs in light of some evidence before  
7 the court on summary judgment that defendant Sellers had repeatedly and completely refused to  
8 treat plaintiff, who had an obviously serious need for medical care. (*Id.* at 18-19.)

9 The parties were provided an opportunity to file objections to the findings and  
10 recommendations within twenty days. Plaintiff filed a statement of non-opposition, affirmatively  
11 accepting the recommendation set forth in the findings and recommendations. (Doc. No. 143.)  
12 Defendants filed no objections.

13 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Rule 304, this  
14 court has conducted a de novo review of this case. Having carefully reviewed the entire file, the  
15 court finds the findings and recommendations to be supported by the record and proper analysis.

16 Accordingly, THE COURT HEREBY ORDERS that:

- 17 1. The findings and recommendations issued by the magistrate judge on August 30,  
18 2017, are ADOPTED in full;
- 19 2. Defendants' motions for summary judgment (Doc. Nos. 99 & 127) are GRANTED in  
20 part and DENIED in part;
- 21 3. To the extent that plaintiff's claim for deliberate indifference to his serious medical  
22 needs based on defendants' alleged failure to provide plaintiff with a custom medical  
23 corset survived screening, defendants are granted summary judgment with respect to  
24 that claim;
- 25 4. Defendants' motion for summary judgment is granted with respect to plaintiff's claim  
26 that defendants' deliberate indifference caused him to contract a spinal infection;

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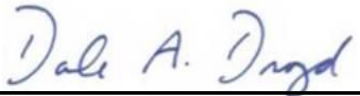
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- 5. Defendants Aye, Moon, Nguyen, Clark, Kim, Gill, and Garza are granted summary judgment in their favor as to plaintiff's claim that they were deliberately indifferent to his serious medical needs in violation of his rights under the Eighth Amendment;
- 6. Defendants' motion for summary judgment is denied with respect to plaintiff's claim that defendant Sellers was deliberately indifferent to his serious medical needs; and
- 7. This case is referred back to the magistrate judge for further proceedings.

IT IS SO ORDERED.

Dated: September 27, 2017

  
UNITED STATES DISTRICT JUDGE