

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DANNY M. COSTON,  
Plaintiff,  
v.  
J.K. YU,  
Defendant.

**CASE NO. 1:14-cv-00148-AWI-MJS**  
**ORDER GRANTING MOTION FOR RECONSIDERATION AND REAFFIRMING ORDER ADOPTING FINDINGS AND RECOMMENDATIONS (ECF NO. 58)**  
**CASE TO REMAIN CLOSED**

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983. This case, which was proceeding against Defendant Dr. Yu on a single Eighth Amendment medical indifference claim, was recently closed upon adoption by the undersigned of the magistrate judge’s recommendation to deny Plaintiff’s motion for summary judgment and to grant summary judgment for Defendant pursuant to Federal Rule of Civil Procedure 56(f).

Plaintiff now moves for reconsideration pursuant to Federal Rules of Civil Procedure 59 and 60 on the ground that his timely objections to the findings and recommendations were not considered by the Court prior to their adoption. Indeed, these objections—dated and submitted for institutional mailing on September 11, 2017—were filed on October 2, 2017, well after the fourteen-day deadline set forth in the August 28, 2017, findings and recommendations and after judgment was entered on

1 September 21, 2017. The Court has now considered Plaintiff's objections and, for the  
2 reasons stated below, hereby reaffirms the order adopting the magistrate judge's  
3 findings and recommendations.

4 The magistrate judge recommended that Plaintiff's motion for summary judgment  
5 be denied due to his failure to submit sufficient evidence showing that Dr. Yu's treatment  
6 of him was medically unacceptable under the circumstances. In light of the evidence  
7 presented, the magistrate judge also recommended pursuant to Rule 56(f) of the Federal  
8 Rules of Civil Procedure that summary judgment be entered sua sponte for Defendant.

9 In his objections to the findings and recommendations, Plaintiff attempts to cure  
10 some of the evidentiary deficiencies identified by the magistrate judge by submitting a  
11 supplemental declaration with two medical record attachments. He also asks the Court  
12 to reconsider the evidence submitted with his motion for summary judgment, arguing that  
13 the magistrate judge erred in his interpretation of that evidence.

14 Plaintiff does not explain why the additional medical records were not submitted  
15 with his motion initially, and the objections do not raise new or additional legal  
16 arguments that were not previously presented. In any event, the presentation of  
17 additional facts and arguments support the recommendation to deny Plaintiff's motion for  
18 summary judgment and to enter judgment for Defendant.

19 Accordingly, IT IS HEREBY ORDERED that Plaintiff's motion for reconsideration  
20 (ECF No. 58) is GRANTED. The Court reaffirms the order adopting the magistrate  
21 judge's findings and recommendations. This case will remain closed.

22  
23 IT IS SO ORDERED.

24 Dated: February 9, 2018

25   
26 SENIOR DISTRICT JUDGE