

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA
9

10 OUSSAMA SAHIBI,
11 Plaintiff,
12 v.
13 BORJAS GONZAES, et al.,
14 Defendants.
15
16

Case No. 1:15-cv-01581-LJO-MJS (PC)

**ORDER ADOPTING FINDINGS AND
RECOMMENDATION TO GRANT IN
PART AND DENY IN PART
DEFENDANT CROUNSE'S MOTION
FOR SUMMARY JUDGMENT**

(ECF No. 92, 120)

17
18 Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil
19 rights action brought pursuant to 28 U.S.C. § 1983. The action proceeds on Plaintiff's
20 Eighth Amendment excessive force claim against Defendants Brandon Cope, Borjas
21 Gonzales, Mario Lozano, Howard Smith, and Stan, and on a Fourteenth Amendment
22 due process claim against Defendant Crouse. The matter was referred to a United
23 States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302 of the
24 United States District Court for the Eastern District of California.

25 On July 11, 2017, the Magistrate Judge issued findings and a recommendation to
26 grant in part and deny in part Defendant Crouse's motion for summary judgment. (ECF
27 No. 92.) Defendant Crouse filed objections. (ECF No. 121.) Plaintiff filed a response.
28 (ECF No. 122.)

1 Defendant Crouse sought summary judgment on the ground that Plaintiff was
2 not entitled to procedural due process in the context of his disciplinary proceeding. The
3 Magistrate Judge correctly concluded that Plaintiff was so entitled. See Wolff v.
4 McDonnell, 418 U.S. 539, 556 (1974). Defendant’s arguments to the contrary are
5 premised on the legally incorrect hypothesis that Plaintiff was entitled to procedural due
6 process only if Defendant himself imposed the disciplinary SHU term that resulted from
7 the hearing. Defendant presents no legal authority that suggests such a result. Wolff
8 stands to the contrary. This argument is without merit and was correctly denied by the
9 Magistrate Judge.

10 Defendant Crouse also sought summary judgment on Plaintiff’s claim for
11 compensatory damages. The Magistrate Judge correctly concluded that Plaintiff could
12 not seek compensatory damages for mental or emotional injuries, and neither party now
13 disputes this point. However, the Magistrate Judge also concluded that Plaintiff may be
14 able to seek compensatory damages for “punishment” in relation to his confinement in
15 the SHU. (ECF No. 120 at 5-6.) Defendant now argues for the first time that Plaintiff has
16 no evidence of such damages and that his allegations are insufficiently specific to
17 support any concrete loss caused by Defendant’s conduct. Because these arguments
18 were not presented in the motion for summary judgment, Plaintiff was never called upon
19 to further support his claim for damages. For this reason, and for the reasons stated
20 below, the Court declines to consider this new argument. Likewise, the Court declines to
21 consider Defendant’s argument that Plaintiff has not sufficiently pled a basis for punitive
22 damages, which also was raised for the first time in Defendant’s objections.

23 Defendant’s objections additionally raise several new bases for summary
24 judgment on the merits of Plaintiff’s claim. Defendant is reminded that the purpose of
25 objections is to identify a specific defect of law or fact in the Magistrate Judge’s
26 analysis. See 28 U.S.C. § 636(b)(1). A District Judge has discretion to consider, or to
27 decline to consider new arguments presented for the first time in objections. See Brown
28 v. Roe, 279 F.3d 742, 745 (9th Cir. 2002). Here, the arguments presented by Defendant

1 are not merely new arguments in support of a point already raised, but new and distinct
2 points entirely. In effect, Defendant attempts to bring a new motion for summary
3 judgment, based on entirely different grounds, through his objections. Some of these
4 arguments would require Plaintiff to make an evidentiary showing to defeat summary
5 judgment. The Court has determined that these belated arguments are not properly
6 raised; the time for bringing a motion for summary judgment has passed. Defendant is
7 represented by counsel in this action and counsel fails to explain the untimely
8 presentation of her request for summary judgment on these grounds. United States v.
9 Howell, 231 F.3d 615, 623 (9th Cir. 2000). Thus, the Court declines to consider
10 Defendant's additional arguments.

11 Based on the foregoing, it is HEREBY ORDERED that:

- 12 1. The Court adopts in full the findings and recommendations filed July 11,
13 2017 (ECF No. 120);
- 14 2. Defendant Crouse's motion for summary judgment (ECF No. 92) is
15 GRANTED IN PART AND DENIED IN PART; and
- 16 3. Plaintiff's claim against Defendant Crouse for compensatory damages for
17 mental and emotional injuries is summarily adjudicated in Defendant's
18 favor.

19
20 IT IS SO ORDERED.

21 Dated: August 18, 2017

/s/ Lawrence J. O'Neill
UNITED STATES CHIEF DISTRICT JUDGE