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8	UNITED STATES DISTRICT COURT		
9	EASTERN DISTRICT OF CALIFORNIA		
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11	DANA SMITHEE, et al.	Case No. 1:19-cv-00004 JLT CDB	
12	Plaintiffs,	ORDER ADOPTING FINDINGS AND	
13	v.	RECOMMENDATIONS AND DENYING DEFENDANT PRATAP NARAYN'S MOTION	
14	CALIFORNIA CORRECTIONAL INSTITUTION, <i>et al.</i>	TO DISMISS	
15	Defendants.	(Docs. 134, 141)	
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17	Dana Smithee and E.M. filed a fifth amended complaint against Pratap Narayn, seeking to		
18	hold the defendant liable for deliberate indifference (cruel and unusual punishment) pursuant to		
19	42 U.S.C. § 1983. (Doc. 129.) Defendant moved to dismiss the fifth amended complaint. (Doc.		
20	134.)		
21	The magistrate judge found Plaintiffs sufficiently pleaded a deliberate indifference claim		
22	against Defendant and recommended the motion be denied. (Doc. 141 at 10-18.) The magistrate		
23	judge also recommended Plaintiffs be granted leave to file a sixth amended complaint, "for the		
24	limited purpose of clarifying the damages sought in connection with Decedent's pain and		
25	suffering." <sup>1</sup> (Id. at 18.) These Findings and Recommendations were served on all parties on		
26	August 18, 2023, and informed the parties that any objections were due 14 days after service.		
27	(Id.) The parties were also advised the "failure to file objections within the specified time may		
28	<sup>1</sup> This sixth amended complaint was filed on August 24, 2023. (Doc. 142)		

1	waive the right to appeal the District Court's order." (Id., citing Wilkerson v. Wheeler, 772 F.3d	
2	834, 839 (9th Cir. 2014); Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991).) No objection	
3	were filed by either party. On August 24, 2023, Plaintiffs filed their sixth amended complaint.	
4	(Doc. 142.)	
5	Pursuant to 28 U.S.C. § 636(b)(1)(C), and Local Rule 304, this Court conducted a <i>de nov</i>	
6	review of this case. Having carefully reviewed the entire matter, this Court concludes the	
7	Findings and Recommendations are supported by the record and by proper analysis. Accordingly	
8	the Court <b>ORDERS</b> :	
9	1. The Findings and Recommendations (Doc. 141) are <b>ADOPTED</b> in full.	
10	2. Defendant's motion to dismiss (Doc. 134) is <b>DENIED</b> .	
11	3. Plaintiffs' sixth amended complaint filed on August 24, 2023 (Doc. 142) is	
12	deemed the operative complaint.	
13	4. Defendant <b>SHALL</b> have fourteen from the date of entry of this Order to respond	
14	to the sixth amended complaint.	
15	5. The action is referred to the assigned magistrate judge for further proceedings.	
16	IT IS SO ORDERED.	
17	Opening the 1 Thereas the	
18	Dated: September 8, 2023	
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