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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

GREGORY TABAREZ,

Plaintiff,

No. 2:04-cv-0360 LKK KJN P

vs.

DIANA BUTLER, et al.,

Defendants.

ORDER

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Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On January 19, 2011, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within twenty-one days. Plaintiff has filed objections to the findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a de novo review of this case.

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1 **I. Procedural Background**

2 On July 22, 2010, the parties filed a notice of settlement of plaintiff’s § 1983 claims  
3 against defendants. ECF No. 185. Plaintiff filed a motion for rescission of the settlement  
4 agreement on August 24, 2010, after the conclusion of a race-based lock down that prohibited  
5 him from accessing the legal library at his detention facility. Mot., ECF No. 189 at 2. The  
6 motion alleges that plaintiff was subjected to undue influence, undue susceptibility and possibly  
7 constructive fraud and collusion between his counsel and the mediator presiding over the  
8 settlement conference. *Id.* at 1. Motion, ECF No. 200 at 11. On September 2, 2010, defendants  
9 moved to enforce the settlement agreement. Def’s. Mot., ECF No. 190. On January 19, 2011, the  
10 magistrate issued its proposed order and recommendation that the court deny plaintiff’s motion to  
11 rescind the settlement agreement. Findings, Doc. No. 195. Plaintiff filed his objections on March  
12 3, 2011. Objections, Doc. No. 200 at 9, 17.

13 **II. Discussion**

14 The magistrate correctly stated the law governing rescission of contracts based on  
15 diminished mental capacity of one of the parties to the contract. There are three categories of  
16 diminished mental capacity that render a contract void or voidable. First, “a person entirely  
17 without understanding has no power to make a contract of any kind. . .” Cal. Civil Code § 38.  
18 The court adopts the magistrate’s finding that plaintiff was not entirely without understanding at  
19 the time of the settlement conference. Plaintiff did not allege that he lacked all understanding,  
20 and his recitation of the events on the day of the settlement conference demonstrate that he had at  
21 least some understanding of the agreement. Section 38, therefore, is inapplicable here.

22 Second, a contract may be set aside for duress if it was “obtained by so oppressing a  
23 person . . . so as to deprive him the free exercise of his will.” *In re Marriage of Broderick*, 209  
24 Cal.App.3d 489. 499 (1989). The court adopts the magistrate’s finding that “plaintiff was not  
25 subject to duress at a level that warrants voiding the settlement agreement.” ECF No. 195 4:25-  
26 26. Plaintiff’s allegations of his lawyers’ and the mediators’ conduct during the settlement

1 negotiation do not support a claim of undue duress.

2 Third, even if a person is not entirely without understanding when entering into a  
3 contract, the contract is voidable under Cal. Civil Code § 39(a) if the party had “an inability to  
4 understand the nature of the contract and to appreciate its probable consequences.” Hellman  
5 Commercial Trust & Savings Bank v. Alden, 206 Cal. 592, 605 (1929) . The court declines to  
6 adopt the magistrate’s finding that “it is clear that plaintiff understood the nature of the  
7 settlement agreement and appreciated its consequences.” ECF No. 195 4:23-24. The magistrate  
8 did not specify the evidence upon which this finding was made. Plaintiff submitted a declaration  
9 with his motion for rescission which stated that at the time that he accepted the settlement  
10 agreement, plaintiff was on pain medications, and that his “head was spinning,” he “could not  
11 think straight,” he was “in pain,” he felt overwhelmed,” and that he needed additional time to  
12 think about the settlement before accepting it. The pain medication that he was taking at the time  
13 for pain related to prostate surgery left plaintiff feeling “disoriented.” Decl. Of Gregory Tabarez,  
14 filed with Pl.’s Mot. for Rescission, ECF No. 189. The court finds that an evidentiary hearing is  
15 required in order to determine whether Mr. Tabarez understood the nature of the settlement  
16 agreement and appreciated its consequences.


17 Accordingly, IT IS HEREBY ORDERED that:

- 18 1. The findings and recommendations filed January 19, 2011 (ECF No. 195) are  
19 adopted in part;
- 20 2. The court declines to adopt the magistrate’s finding that plaintiff understood the  
21 nature of the settlement agreement and appreciated its consequences.
- 22 3. The court declines to adopt the magistrate’s recommendation that plaintiff’s  
23 motion to rescind the settlement agreement (ECF No. 189) be denied.
- 24 4. The court declines to adopt the magistrate’s recommendation that defendant’s  
25 motion to enforce the agreement (ECF No. 190) be granted.

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1 5. This matter is referred back to the magistrate for an evidentiary hearing  
2 consistent with this order.

3 DATED: March 31, 2011.

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6 LAWRENCE K. KARLTON  
7 SENIOR JUDGE  
8 UNITED STATES DISTRICT COURT  
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