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

PETER DALE GRAVES,

No. CIV S-07-0666-KJM-CMK-P

Plaintiff,

vs.

ORDER

KAREN TODD, et al.,

Defendants.

_____ /

Plaintiff, a prisoner proceeding pro se, brings this civil rights action under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. 636(b)(1)(B) and Local Rule 302.

On March 2, 2011, the magistrate judge filed findings and recommendations, which were served on the parties and which contained notice that the parties may file objections within a specified time. Plaintiff has filed timely objections to the findings and recommendations; several defendants have responded to plaintiff's objections.

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1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule
2 304(f), this court has conducted a *de novo* review of this case. For the reasons set forth below, it
3 declines to adopt the findings and recommendations at this time.

4 During the course of the litigation, plaintiff sought to depose his treating
5 physicians by written questions. *See* ECF Nos. 131, 148, 158, 159. The magistrate judge
6 restricted the questions plaintiff could ask one physician, Dr. Allen, because the latter was being
7 deposed as a percipient witness rather than as an expert witness. ECF No. 157. Plaintiff sought
8 reconsideration of this order. ECF No. 160. The district court found that the order was not
9 clearly erroneous, but said its determination was without prejudice to plaintiff's renewing the
10 objections upon a showing he had complied with Rule 26(a)(2) of the Federal Rules of Civil
11 Procedure. ECF No. 168.

12 Plaintiff returned to the magistrate judge with renewed objections, based on his
13 contention that he had properly designated Dr. Allen as an expert witness. ECF Nos. 186-187.
14 The magistrate judge allowed defendants to respond to plaintiff's renewed showing. ECF Nos.
15 192, 195-196. The docket, which is lengthy and convoluted, does not reflect that the magistrate
16 judge resolved the objections or considered what impact any such resolution might have on the
17 summary judgment proceedings.

18 Accordingly, IT IS HEREBY ORDERED that:

- 19 1. The court declines to adopt the findings and recommendations (ECF No.
20 209);
- 21 2. The case is referred back to the magistrate judge for resolution of
22 plaintiff's renewed request to depose Dr. Allen as an expert witness and
23 its bearing, if any, on the motions for summary judgment.

24 DATED: September 30, 2011.

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26 _____
UNITED STATES DISTRICT JUDGE