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

ARCHIE A. MARTINEZ,

No. CIV S-09-0680-KJM-CMK-P

Plaintiff,

v

vs. <u>ORDER</u>

13 G. HOOVER, et al.,

Defendants.

Plaintiff, a state 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 Eastern District of California local rules.

On September 6, 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. No objections to the findings and recommendations have been filed.

The court thus presumes that any findings of fact are correct. *See Orand v. United States*, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge's conclusions of law are reviewed *de novo*. *See Britt v. Simi Valley Unified School Dist.*, 708 F.2d 452, 454 (9th Cir. 1983). Having carefully reviewed the file, the court finds the findings and recommendations to be supported by the record and by the proper analysis.

Accordingly, IT IS HEREBY ORDERED that:

- 1. The findings and recommendations filed September 6, 2011, are adopted in full;
- 2. Defendants' motion to dismiss (Doc. 32) is granted in part and denied in part, as follows:
 - a. To the extent plaintiff is claiming due process violation relating to his prison disciplinary proceedings or placement in administrative segregation, such claim is dismissed for failure to state a claim;
 - b. To the extent plaintiff is claiming false imprisonment, such claim is dismissed for failure to state a claim;
 - c. To the extent plaintiff is claiming bribery, such claim is dismissed for failure to state a claim;
 - d. The motion to dismiss the retaliation claims against defendant Blim only is granted;
 - e. The motion to dismiss defendants Blim and Olivas from this action is denied;
 - f. This action shall proceed on plaintiff's excessive force, retaliation and medical treatment claims except as outlined above; and
- 3. Defendant's motion to strike (Doc. 48) is granted, and Plaintiff's motion for leave to file a surreply (Doc. 49) and request for additional time in which to do so (Doc. 46) are denied.

DATED: September 28, 2011.

UNITED STATES DISTRICT JUDGE