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

TONY ASBERRY,

Plaintiff,

No. 2:09-cv-1494-MCE-KJN-P

vs.

MATTHEW CATE, et al.,

Defendants.

ORDER

\_\_\_\_\_ /

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 27, 2012, 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. Neither party has filed objections to the findings and recommendations.

The Court has reviewed the file and finds the findings and recommendations to be supported by the record and by the magistrate judge’s analysis. Accordingly, IT IS HEREBY ORDERED that:

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1. The findings and recommendations filed January 27, 2012 (ECF No. 52), are ADOPTED in full.


2. Defendants' motion to dismiss plaintiff's Eighth Amendment claim against defendant Phelps (ECF No. 30) is GRANTED;

3. This action shall proceed on plaintiff's substantive due process and equal protection claims against defendant Phelps, and plaintiff's due process claim against defendant Hernandez;

4. Defendants shall file an answer within 21 days from the date of this order on plaintiff's remaining claims; and

5. Plaintiff's second motion for a preliminary injunction (EDF No. 32) is DENIED.

Dated: March 28, 2012

  
MORRISON C. ENGLAND, JR.  
UNITED STATES DISTRICT JUDGE