

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

MICHAEL A. HUNT,

Plaintiff,

No. 2: 09-cv-3525 KJM GGH P

vs.

D. FIELDS,

Defendant.

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 September 10, 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 fourteen days. On September 27, 2012, after receiving no objections to the findings and recommendations, the court adopted them, denying plaintiff’s motion for summary judgment and denying in part and granting in part defendant’s motion for summary judgment.

On September 28, 2012, the court received plaintiff’s objections to the findings and recommendations, which were constructively filed on Sunday, September 23, 2012. See

1 Houston v. Lack, 487 U.S. 266, 108 S.Ct. 2379 (1988). Because plaintiff's objections were
2 constructively filed within 14 days after the findings and recommendations were filed, the court
3 will vacate the September 27, 2012 order and consider the merits of plaintiff's objections.

4 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule
5 304, this court has conducted a renewed de novo review of this case. Having carefully reviewed
6 the file, the court finds the findings and recommendations to be supported by the record and by
7 proper analysis.¹ Accordingly, IT IS HEREBY ORDERED that:

- 8 1. The court's September 27, 2012 order (Doc. No. 59) is vacated;
- 9 2. The findings and recommendations filed September 10, 2012 are adopted in
10 full;
- 11 3. Plaintiff's motion for summary judgment (Doc. No. 35) is denied;
- 12 4. Defendant's motion to dismiss and for summary judgment (Doc. No. 45) is
13 granted in part, and denied in part, as outlined in the findings and recommendations, and leaving
14 at issue plaintiff's retaliation claim in connection with the August 28, 2008 work re-assignment;
15 and
- 16 5. This case is referred back to the magistrate judge for setting a further schedule
17 for trial on the remaining retaliation issue.

18 DATED: October 5, 2012.

19 
20 UNITED STATES DISTRICT JUDGE
21
22
23
24
25

26 _____
¹ The court notes the inadvertent omission of the word "not" on page 12, line 8.