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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSE B. ORTIZ,
Plaintiff,
v.
REYNOLDS et al.,
Defendants.

No. 2:10-cv-1380-MCE-EFB P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding without counsel who filed this action under 42 U.S.C. § 1983. The parties agreed to settle all remaining claims on February 22, 2017. ECF No. 163. The case was accordingly dismissed on March 14, 2017. ECF No. 169.

On July 31, 2017, plaintiff submitted a letter to the court complaining that defendants had not complied with the settlement agreement. ECF No. 171. The court found that defendants had complied regarding some terms, but ordered defense counsel to provide evidence showing the application of settlement funds to plaintiff’s restitution fines and make a further good faith effort to replace plaintiff’s radio. ECF No. 176. Defense counsel has done so. ECF Nos. 177, 178. Plaintiff has had ample time to respond to that evidence but has not responded.

Courts treat settlement agreements as contracts. *Rouser v. White*, 825 F.3d 1076, 1081 (9th Cir. 2016). The court has construed plaintiff’s letter as a motion to enforce the settlement agreement. Accordingly, the question before the court is whether defendants have substantially

1 complied with the agreement. *Id.* at 1081-82. Defendants have substantially complied if any
2 deviation from the terms of the agreement is unintentional and so minor or trivial as to not
3 substantially defeat the object of the agreement. *Id.* at 1082. The court has already concluded
4 that defendants have substantially complied with much of the agreement. ECF No. 176 at 5. The
5 court now finds that defendants have substantially complied with the remaining terms. They have
6 submitted evidence showing the application of the settlement funds to plaintiff's restitution fines
7 and inform the court that plaintiff has been offered and has accepted a replacement radio.

8 Accordingly, it is hereby RECOMMENDED that the July 31, 2017 motion to enforce the
9 settlement agreement (ECF No. 171) be DENIED.

10 These findings and recommendations are submitted to the United States District Judge
11 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
12 after being served with these findings and recommendations, any party may file written
13 objections with the court and serve a copy on all parties. Such a document should be captioned
14 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections
15 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
16 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

17 DATED: August 27, 2018.

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19 EDMUND F. BRENNAN
20 UNITED STATES MAGISTRATE JUDGE
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