

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

JOSE B. ORTIZ,

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

Plaintiff,

vs.

ORDER

J. REYNOLDS, et al.,

Defendants.

_____ /

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 22, 2013, the Magistrate Judge filed findings and recommendations herein (ECF No. 63) 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. Defendant Miranda has filed objections to the findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this Court has conducted a de novo review of this case. Having carefully reviewed the entire file, the Court finds the findings and recommendations to be supported by the record and

1 by proper analysis.

2 While defendant contends that the Court's screening orders found that only an Eighth
3 Amendment claim was cognizable against defendant Miranda, the Court has reviewed those
4 orders and concludes that no such limitation is contained therein. (See ECF Nos. 5, 23.)
5 Plaintiff's complaints, both original and amended, have consistently alleged retaliatory conduct
6 by Defendant Miranda. (See ECF No. 1 at 4; ECF No. 21 at 9.)

7 Accordingly, IT IS HEREBY ORDERED that:


8 1. The findings and recommendations filed January 22, 2013 (ECF No. 63) are
9 ADOPTED IN FULL.

10 2. Defendant's September 26, 2012 motion to strike (ECF No. 60) is GRANTED.

11 3. Defendant's August 3, 2012 motion for summary judgment (ECF No. 51) is
12 GRANTED IN PART, as to Plaintiff's claims that Defendant threatened to discontinue his pain
13 medication on September 25, 2008 and December 1, 2009 in violation of the Eighth
14 Amendment, and otherwise DENIED.

15 4. Defendant is granted leave to file a second motion for summary judgment
16 within 30 days of the date of this Order addressing the remaining allegations identified in the
17 Magistrate Judge's findings and recommendations.

18 DATED: March 27, 2013

19
20
21 
22 MORRISON C. ENGLAND, JR., CHIEF JUDGE
23 UNITED STATES DISTRICT JUDGE
24
25
26