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

RANDOLPH DIAZ,

Plaintiff,

No. 2:10-cv-1388-MCE-KJN-P

vs.

M. MARTEL, 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 December 7, 2012, the Magistrate Judge filed findings and recommendations herein (ECF No. 30) 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. 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 December 7, 2012 (ECF No. 30) are ADOPTED IN FULL;


2. Defendants' motion to dismiss (ECF No. 22) is GRANTED IN PART and DENIED IN PART;

3. Defendant Smith is DISMISSED from this action without prejudice;

4. Summary judgment in favor of Defendant Hashimoto is GRANTED with respect to Plaintiff's pendent state law claims for damages; and

5. This action shall proceed against Defendant Hashimoto based on Plaintiff's Eighth Amendment deliberate indifference claim.

DATED: January 29, 2013


MORRISON C. ENGLAND, JR., CHIEF JUDGE
UNITED STATES DISTRICT JUDGE