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

DYKE EDWARD NELSON,

Plaintiff,

No. 2:10-cv-2156 MCE JFM P

vs.

DR. ALEX ZIGA,

FINDINGS & RECOMMENDATIONS

Defendant.

_____ /

Plaintiff is a state prisoner who proceeded pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff alleged that defendant Dr. Alex Ziga violated plaintiff’s rights under the Eighth Amendment by prescribing medications to plaintiff without discontinuing other medications that were “lethal” when combined. (Fifth Am. Compl. filed May 25, 2011 (ECF No. 19) at 3.) By order filed April 29, 2013, the assigned District Judge adopted findings and recommendations that had been issued, granted summary judgment for defendant and denied plaintiff’s motion to amend his complaint. (ECF No. 66). Judgment was entered on the same day (ECF No. 67).

On May 9, 2013, plaintiff filed a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(a) or 60. (ECF No. 69.) The court construes this as a motion for relief from judgment pursuant to Fed. R. Civ. P. 60. Defendant has opposed plaintiff’s motion. (ECF No. 70.)

1 Rule 60(b) of the Federal Rules of Civil Procedures provides in relevant part for
2 relief from judgment on the basis of “ mistake, inadvertence, surprise, or excusable neglect” or
3 “any other ground that justifies relief.” Fed. R. Civ. P. 60(b)(1), (6). In his motion to alter or
4 amend the judgment, plaintiff neither advances any new argument nor presents any new
5 evidence. For that reason, this court finds that plaintiff has made no showing that supports his
6 request for relief from the judgment entered in this action.

7 Accordingly, IT IS HEREBY RECOMMENDED that plaintiff’s May 9, 2013
8 motion to alter or amend judgment (ECF No. 69) be denied.

9 These findings and recommendations are submitted to the United States District
10 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
11 days after being served with these findings and recommendations, any party may file written
12 objections with the court and serve a copy on all parties. Such a document should be captioned
13 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
14 objections shall be filed and served within fourteen days after service of the objections. The
15 parties are advised that failure to file objections within the specified time may waive the right to
16 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

17 DATED: August 15, 2013.

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21 DALE A. DROZD
22 UNITED STATES MAGISTRATE JUDGE
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