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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMAAL THOMAS,

 Plaintiff,

 v.

ANTIPOV, et al.,

 Defendants.

No. 2:11-cv-1138-MCE-EFB P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. On May 20, 2015, United States Magistrate Judge Kendall J. Newman presided over a settlement conference, which resulted in the parties’ agreement to settle this case. ECF No. 142. Upon confirmation that a settlement had been reached, the terms of the settlement were stated on the record. *Id.* Thereafter, however, plaintiff sent a letter to Judge Newman stating that he (plaintiff) had decided to “decline” defendants’ settlement “offer.” ECF No. 144. Judge Newman responded by order that “[t]he record reflects that all parties agreed to the terms of the settlement in open court.” ECF No. 143. Plaintiff now moves for a second settlement conference. ECF No. 147. Defendants move to enforce the settlement agreement. ECF No. 149.

I. Background

The current dispute centers around a portion of the settlement agreement in which plaintiff agreed to substitute the California Department of Corrections and Rehabilitation (“CDCR”) for

1 defendants in this action for purposes of settlement. According to plaintiff, when the substitution
2 was discussed at the settlement conference, “vital information was withheld from plaintiff and
3 suppressed by Defendants.” Plaintiff states that this “vital information” is the fact that one
4 purpose for the defendants wanting the substitution as a condition of settlement was for “keeping
5 defendants’ records ‘clean’ before the Medical License Board.” ECF No. 150 at 4. Plaintiff
6 states that, if he had known this motivation by defense, he would not have agreed to the
7 settlement. He also states that there is some language in the proposed written settlement
8 agreement (which he does not identify) that he does not understand. While not entirely clear, it
9 appears that plaintiff has not asked for clarification of the language from defense counsel.
10 Instead, plaintiff would like Judge Newman to hold a new settlement conference to clarify the
11 language.

12 The recording of the proceeding in which the settlement was placed on the record
13 confirms that a settlement agreement was in fact reached. It also confirms that all parties were
14 aware of the condition insisted upon by defendants that the CDCR be substituted in place of the
15 individually named defendants. Defense counsel noted on the record that the substitution was
16 “for settlement purposes.” Judge Newman informed plaintiff, on the record, that the settlement
17 funds would come from CDCR anyway and asked if he objected to the substitution. Plaintiff said
18 no. Later, after the settlement had been confirmed and stated for the record, plaintiff asked if the
19 sole reason for the substitution was because CDCR would be paying the funds. Judge Newman
20 specifically informed plaintiff that another reason was that medical professionals may have
21 various reporting responsibilities as a result of litigation against them, and that the substitution
22 would make things cleaner, noting that the money to fund the settlement was coming from CDCR
23 anyway. Defense counsel agreed, saying unequivocally that defendants wanted the substitution to

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1 avoid the reporting requirements.¹ Plaintiff voiced no objection. The settlement was confirmed
2 on the record and the hearing ended.

3 II. Analysis

4 When the parties to litigation come to an oral agreement to settle the case and agree in
5 open court to the terms of the agreement as they are placed on the record, the parties become
6 bound by the agreement even if they have not yet signed a written settlement agreement. *Doi v.*
7 *Halekulani Corp.*, 276 F.3d 1131, 1137-38 (9th Cir. 2002). Plaintiff's contention that "vital
8 information" regarding the substitution of CDCR for the defendant doctors was "withheld" from
9 him is belied by the hearing record, which confirms that Judge Newman and defense counsel
10 straightforwardly informed plaintiff that defendants wanted the substitution to avoid certain
11 reporting requirements. Indeed, it appears that this was precisely the point of defendants'
12 willingness to compromise in a case that they otherwise would have litigated to judgment.
13 Having been so informed, plaintiff did not raise any objection. As confirmed by the record of the
14 settlement proceedings, plaintiff expressly and knowingly agreed to the terms of the settlement in
15 open court and he is now bound by the settlement agreement as stated on the record just as though
16 he had signed a written agreement containing those terms. *Doi*, 276 F.3d at 1137-38.

17 As to plaintiff's claim that he needs help understanding certain unidentified portions of the
18 written agreement, Judge Newman directed plaintiff to first seek an explanation of anything in the
19 agreement he did not understand from defense counsel. Plaintiff does not indicate that he has

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21 ¹ While it is unclear, plaintiff appears to question the propriety of the defendants'
22 motivation for the settlement. There are several reasons why a litigant may choose to
23 compromise and settle a claim, even in a case that the litigant is confident it could win (albeit at
24 the cost of still further attorney fees and litigation costs). Identifying potential motivations to
25 settle and finding creative ways to enable the parties to compromise are necessary challenges in
26 presiding over settlement conferences. Reporting procedures that might adversely affect a
27 litigant's ability to continue in a profession if that litigant agrees to pay what it considers even a
28 nuisance value settlement to avoid paying higher costs by proceeding to trial present such a
challenge. The compromise reached here enables CDCR to pay a settlement amount that is
satisfactory to the plaintiff, yet low enough for CDCR (which bears the litigation costs) to warrant
settlement without further litigation expenses, and yet achieves the very goal of the individual
defendants who wanted the case to proceed to judgment and may not have otherwise consented to
the settlement. There was nothing inappropriate about facilitating that compromise, which was
disclosed to plaintiff at the time that the agreement was placed on the record.

1 done so, nor does he identify which portions of the agreement are unclear. While plaintiff is free
2 to confer with defense counsel regarding any portions of the agreement that he now claims he
3 does not understand, he has not presented any reason to set aside the terms of the settlement
4 agreement as stated on the record at the time of the court supervised settlement conference.

5 **III. Conclusion and Recommendation**

6 For the reasons stated above, the undersigned recommends that:

- 7 1. Plaintiff's motion for a second settlement conference (ECF No. 147) be denied
8 without prejudice.
- 9 2. Plaintiff be provided a period of 30 days in which to file a new motion for a second
10 settlement conference with Judge Newman. Such a motion must describe the portions
11 of the agreement plaintiff does not understand and indicate that plaintiff has discussed
12 those portions with defense counsel prior to filing the motion.
- 13 3. Ruling on defendants' motion to enforce the settlement agreement (ECF No. 149) be
14 deferred until the resolution of the new motion for a second settlement conference
15 filed by plaintiff or the date on which the time for filing such a motion passes.

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

23 DATED: August 2, 2016.

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25 EDMUND F. BRENNAN
26 UNITED STATES MAGISTRATE JUDGE
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