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

TONY ASBERRY,

Plaintiff,

No. 2:11-cv-2462-KJM-KJN-P

vs.

MATTHEW CATE, 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 as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On March 7, 2013, the magistrate judge filed findings and recommendations, 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. On March 25, 2013, plaintiff 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 file, the court finds the findings and recommendations to be supported by the record and by the proper analysis.

1 Accordingly, IT IS HEREBY ORDERED that:

2 1. The findings and recommendations filed March 7, 2013, are adopted in full.

3 2. Defendants' motions to dismiss (dkt. nos. 63 and 84) are granted in part and
4 denied in part as follows:

5 a. Defendants' motion to dismiss plaintiff's failure to protect claims as to
6 defendants Elston, Virga and Dr. Chen is denied;

7 b. Defendants' motion to dismiss plaintiff's Eighth Amendment claims as
8 to defendants Dr. Wedell and Dr. Ali is denied as to plaintiff's claims that he was not timely
9 provided physical therapy or a waist chain chrono;

10 c. Defendants' motion to dismiss plaintiff's state law claims is denied
11 without prejudice; and

12 d. In all other respects, defendants' motion to dismiss is granted based on
13 plaintiff's failure to exhaust his claims as to defendants McCarvel, Dr. Bobbala, Dr. Nangalama,
14 Dr. Dhillon and Dr. Duc.

15 3. Defendants Phelps, Elston, Virga, Dr. Chen, Dr. Wedell, and Dr. Ali shall file
16 an answer within fourteen (14) days from the date of this order.

17 DATED: August 29, 2013.

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20 UNITED STATES DISTRICT JUDGE
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