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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SHERMAN MANNING and  
PETER ANDRIST,

Plaintiff,

v.

M. BUNNELL, et al.,

Defendants.

No. 2:12-cv-2440 MCE AC P

ORDER

Plaintiffs, a state prisoner and his publisher, are proceeding with counsel in a 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 May 24, 2013, the magistrate judge filed findings and recommendations herein 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. Plaintiffs were granted an extension of time (ECF No. 66) to file objections to the findings and recommendations and have done so. Defendants Humphries, Johnson, Ralls and Wenker filed a reply to the objections.


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 by proper

1 analysis.

2 Accordingly, IT IS HEREBY ORDERED that:

- 3 1. The findings and recommendations filed May 24, 2013, are adopted in full; and
- 4 2. The motions to dismiss, (ECF Nos. 19, 25, and 45), are GRANTED as follows:
- 5 A. Claim One, alleging violation of the Eighth Amendment and pendent state law
- 6 claims based on the Valley Fever allegations, and the related prayer for injunctive
- 7 relief regarding medical care for Valley Fever, is dismissed with prejudice;
- 8 B. Claims Three and Four, alleging negligence, are dismissed with prejudice;
- 9 C. Claim Five, alleging tortious interference with contract and/or interference with
- 10 prospective business advantage, is dismissed with prejudice;
- 11 D. Plaintiffs' prayer for injunctive relief in the form of an order preventing his
- 12 transfer is dismissed with prejudice;
- 13 E. Claim Two is dismissed without prejudice, and plaintiffs are granted leave to
- 14 amend their claim(s) premised on violations of the First Amendment, retaliation
- 15 for the exercise of First Amendment rights, and related conspiracy; and
- 16 F. Plaintiffs must file any second amended complaint within twenty-eight days of the
- 17 date this order is filed.

18 Date: August 05, 2013

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21 MORRISON C. ENGLAND, JR., CHIEF JUDGE

22 UNITED STATES DISTRICT COURT

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