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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RAUL ENRIQUE RAMIREZ,
Plaintiff,
v.
B. FLEMMING, et al.,
Defendants.

No. 2:14-cv-1937 KJM CKD P

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 August 12, 2015, 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. Defendants have 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 proper analysis.

The court writes separately to emphasize that defendants’ motion is premised to a large extent on their assertion that “mere threats” do not violate the federal constitution. *See* ECF No.

1 19-1 at 4-6. As the magistrate judge correctly found, plaintiff alleges that defendants Fleming,
2 Davie and McDonald all engaged in acts that would have led other inmates to believe plaintiff
3 was an informant. *See* ECF No. 1 ¶¶ 26-27. Thus, the allegations of the complaint go beyond
4 “mere threats.” It is settled that allegations that correctional officers have identified an inmate as
5 an informant and that the inmate suffers harm as a result are sufficient to state an Eighth
6 Amendment claim. *See Valandingham v. Bojorquez*, 866 F.2d 1135, 1138 (9th Cir. 1989).
7 Viewing the allegations of the complaint in the light most favorable to the plaintiff, the court
8 finds the allegations of the complaint are sufficient to create an inference that defendant Harrison
9 also spoke in a place and manner that could have been heard by other inmates and led them to
10 believe plaintiff was an informant. *See* ECF No. 1 ¶ 23. For the reasons set forth by the
11 magistrate judge, plaintiff has sufficiently alleged cognizable injury as a result of defendants’
12 alleged acts.

13 Accordingly, IT IS HEREBY ORDERED that:

- 14 1. The findings and recommendations filed August 12, 2015 are adopted in full;
- 15 2. Defendants’ motion to dismiss (ECF No. 19) is denied;
- 16 3. Plaintiff’s claims against defendants Fleming, Davie, McDonald and Harrison arise under
17 the Eighth Amendment; and
- 18 4. Defendants shall file and serve an answer to the complaint within fourteen days of this
19 order.

20 DATED: September 28, 2015.

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23 UNITED STATES DISTRICT JUDGE
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