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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSE R. ZAIZA,  
  
Plaintiff,  
  
v.  
  
D. TAMPLEN, et al.,  
  
Defendants.

No. 2:15-cv-447-KJM-EFB 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 March 1, 2019, 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. *See* Findings & Recommendations (“Findings”), ECF No. 50. Both parties have filed objections to the findings and recommendations.

In the Findings, the magistrate judge referred to a Health Care Services Request Form plaintiff filed on November 5, 2012, which references plaintiff’s deliberate indifference claims and is stamped to indicate it was reviewed by the third level of appeal. *See* Findings at 12 (citing ECF No. 1 at 74). For the first time in their objections, defendants supplement the record regarding this document, purportedly showing that plaintiff did not include the deliberate

1 indifference claim in his second and third level appeals associated with the November 5, 2012  
2 Health Care Services Request Form. *See* Defs.’ Objs., ECF No. 51, at 7–8 (citing Mathison  
3 Decl., Ex. A, ECF No. 51-1, at 3–26). It is within the court’s discretion whether to consider new  
4 evidence submitted with objections to Findings and Recommendations. *Curtis v. Berryhill*, No.  
5 3:16-CV-1952-PK, 2018 WL 1535479, at \*1 (D. Or. Mar. 29, 2018).

6 Plaintiff mailed his objections to the court before defendants filed theirs. *See* Pls.’  
7 Objs., ECF No. 52, at 4 (dated March 9, 2020). Therefore, plaintiff has not had the opportunity to  
8 respond to defendants’ new evidence, introduced for the first time in the objections. To cure any  
9 potential prejudice to plaintiff that may be caused by the court’s considering defendants’ new  
10 evidence, the court hereby ORDERS that plaintiff is allowed twenty-one (21) days from the date  
11 of this order to respond to the new evidence offered with defendants’ objections, ECF No. 51,  
12 after which the court will review the Findings and Recommendations *de novo* and issue its order  
13 on them.

14 IT IS SO ORDERED.

15 DATED: February 24, 2020.

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19 CHIEF UNITED STATES DISTRICT JUDGE  
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