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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

Kenneth Wayne Parks,  
  
Plaintiff,  
  
v.  
  
Jeffrey Rohlfling, et al.,  
  
Defendants.

No. 2:15-cv-1505-KJM-CKD  
  
ORDER

Plaintiff Kenneth Parks, 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 September 22, 2020, the magistrate judge filed findings and recommendations, which recommend granting the defendants’ amended motion for summary judgment in part and denying it in part. See Am. Mot. Summ. J., ECF No. 121; F&Rs, ECF No. 144. These findings and recommendations were served on the parties and contained notice that any objections to the findings and recommendations were to be filed within fourteen days. Parks did not object. Defendants Miranda and Rohlfling object in part; they argue the magistrate judge should have granted summary judgment in full.

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 reviewed the file, the court finds the

1 findings and recommendations to be supported by the record and by the proper analysis. The  
2 court writes separately here to address the defendants’ objections.

3 The magistrate judge recommends denying summary judgment of the claim against  
4 Miranda, a physician’s assistant who treated Mr. Parks. *See* F&Rs at 7–8. Parks alleges that  
5 Miranda was deliberately indifferent to his serious medical needs in violation of the Eighth  
6 Amendment because, among other reasons, Miranda denied Mr. Parks ibuprofen. *See id.* at 17.  
7 Miranda moved for summary judgment, arguing the medical records showed that he had a  
8 legitimate reason to deny Parks’s request—“because [Parks] was scheduled for surgery, and  
9 ibuprofen would thin his blood and should not be taken.” *See id.* at 7; Miranda Decl. ¶ 20,  
10 ECF No. 118-6.

11 The magistrate judge correctly recommended against summary judgment on the basis of  
12 these records and Miranda’s declaration. First, as the magistrate judge explained, no evidence in  
13 the record shows beyond dispute that Parks was in fact scheduled for surgery at the time Miranda  
14 refused his request for ibuprofen, let alone that the surgery would occur soon after the  
15 appointment. *See* F&Rs at 7. Second, Parks would testify at trial that he was *not* scheduled for  
16 surgery, that he “attempted to tell” Miranda he was not scheduled for surgery, and that Miranda  
17 “ignored” him. *See* Parks Decl. ¶ 58, ECF No. 140-1. Because the reasons for Miranda’s refusal  
18 are material and genuinely disputed, summary judgment must be denied.

19 Miranda’s objections do not show otherwise. His objections are based on notes about an  
20 appointment a few days before his decision not to give Parks ibuprofen. *See* Objs. at 2–3 (citing  
21 Miranda Decl. ¶ 19 & Ex. M, ECF No. 118-6). In those notes, Miranda wrote that according to  
22 “RN Weeks,” Parks was scheduled for surgery at some unspecified date. Miranda Decl. Ex. M.  
23 To the extent Miranda relies on these notes to prove Parks was truly scheduled for surgery, they  
24 are inadmissible hearsay, and summary judgment cannot be granted on the basis of inadmissible  
25 evidence. *See Burch v. Regents of Univ. of California*, 433 F. Supp. 2d 1110, 1121 (E.D. Cal.  
26 2006). To the extent Miranda relies on the notes to prove some other relevant fact, such as notice,  
27 the central dispute described above would remain unresolved. Parks would testify at trial that he  
28 was not scheduled for surgery and that he attempted unsuccessfully to convince Miranda this was

1 so, and no evidence suggests a surgery at some unspecified point in the future is good reason to  
2 withhold ibuprofen.

3 Accordingly, IT IS HEREBY ORDERED that:

4 1. The findings and recommendations filed September 22, 2020, are adopted in full.

5 2. Defendants' amended motion for summary judgment (ECF No. 121) is:

6 A. Granted with respect to plaintiff's remaining claims against defendant  
7 Dr. Rohlring;

8 B. Denied with respect to plaintiff's claim that defendant Miranda denied  
9 plaintiff Ibuprofen on or about April 8, 2014; and

10 C. Granted with respect to plaintiff's other remaining claims against defendant  
11 Miranda.

12 3. This matter is referred back to the assigned magistrate judge for all further pretrial  
13 proceedings.

14 IT IS SO ORDERED.

15 DATED: February 23, 2021.

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CHIEF UNITED STATES DISTRICT JUDGE