1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 WILLIAM JOHNSON, No. 2:16-cv-1536 JAM KJN P 12 Plaintiff, 13 **ORDER** v. 14 J. CHAU, et al., 15 Defendants. 16 17 Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief 18 under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 19 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. 20 On December 20, 2019, the magistrate judge filed findings and recommendations herein 21 which were served on all parties and which contained notice to all parties that any objections to 22 the findings and recommendations were to be filed within fourteen days. Plaintiff has filed 23 objections to the findings and recommendations. 24 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this 25 court has conducted a <u>de novo</u> review of this case. Having carefully reviewed the entire file, the 26 court finds the findings and recommendations to be supported by the record and by proper 27 analysis. 28 Attached to plaintiff's objections is a declaration by plaintiff and a medical record. (ECF 1

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No. 73 at 27-34.) The declaration addresses some findings made by the magistrate judge. For example, the magistrate judge found that plaintiff provided no evidence demonstrating that following June 1, 2015, defendant Chau knew that plaintiff had previously tried methadone and that it did not effectively treat his pain. (ECF No. 68 at 15.) The magistrate judge found that plaintiff did not claim that after June 1, 2015, plaintiff told defendant Chau that he (plaintiff) had previously tried methadone and that it did not adequately treat his pain. (Id.) The magistrate judge also found that defendant Chau's alleged failure to review plaintiff's medical records did not amount to deliberate indifference. (Id. at 14.)

In the declaration attached to his objections, plaintiff states that on more than one occasion, he tried to express to defendant Chau that when he used methadone in the past, it did not effectively relieve plaintiff's pain. (ECF No. 32.) Plaintiff also alleges that he observed defendant Chau reviewing plaintiff's electronic medical file during each appointment with him. (Id. at 33.)

The undersigned declines to consider the new evidence attached to plaintiff's objections, including plaintiff's declaration. See Brown v. Roe, 279 F.3d 742, 744-45 (9th Cir. 2002) (district court has discretion but is not required to consider evidence or claims presented for the first time in objections to a report and recommendation). Plaintiff filed a 119 page opposition to defendants' summary judgment motion. (ECF No. 64.) Plaintiff had ample opportunity to present evidence in support of his claims.

Accordingly, IT IS HEREBY ORDERED that:

- 1. The findings and recommendations filed December 20, 2019, are adopted in full;
- Defendants' summary judgment motion (ECF No. 58) is granted as to plaintiff's
 Eighth Amendment claims; and
 - 3. Plaintiff's state law claims are dismissed.

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DATED: May 5, 2020

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/s/ John A. Mendez

UNITED STATES DISTRICT COURT JUDGE