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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

CLIFFORD W. MILLER,

Plaintiff,

v.

ROMEO ARANAS, *et al.*,

Defendants.

Case No. 3:17-cv-00068-MMD-WGC

ORDER

I. SUMMARY

Plaintiff Clifford Miller, currently incarcerated and in the custody of the Nevada Department of Corrections (“NDOC”), brings claims against Defendants the NDOC for violations of Title II of the Americans with Disability Act (“ADA”) and Dr. Romeo Aranas under 42 U.S.C. § 1983 for violations of Plaintiff’s Eighth Amendment rights. (ECF No. 71 (“TAC”).) Before the Court are two Reports and Recommendations (ECF Nos. 99, 100 (“R&Rs”)) of United States Magistrate Judge William G. Cobb. The R&Rs recommend the Court deny Plaintiff’s partial summary judgment motions (ECF Nos. 75, 76 (“Motions”)). Plaintiff timely filed his objections (ECF Nos. 101, 103 (“Objections”)) to the R&Rs.¹ Because the Court agrees with Judge Cobb and as further explained below, the Court overrules Plaintiff’s Objections and will adopt the R&Rs in full.

II. BACKGROUND

The Court incorporates by reference Judge Cobb’s recitation of the factual background provided in the R&Rs, which the Court adopts here. (ECF Nos. 99 at 2-4, 7-12; 100 at 2-3, 6-14.)

¹Defendants filed corresponding responses (ECF Nos. 106, 108) to the Objections.

1 **III. LEGAL STANDARD**

2 **A. Review of the Magistrate Judge's Recommendations**

3 This Court "may accept, reject, or modify, in whole or in part, the findings or
4 recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party
5 timely objects to a magistrate judge's report and recommendation, then the Court is
6 required to "make a de novo determination of those portions of the [report and
7 recommendation] to which objection is made." *Id.* Because of Plaintiff's Objections to the
8 R&Rs, the Court has undertaken a *de novo* review.

9 **B. Summary Judgment**

10 "The purpose of summary judgment is to avoid unnecessary trials when there is no
11 dispute as to the facts before the court." *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*, 18
12 F.3d 1468, 1471 (9th Cir. 1994) (citation omitted). Summary judgment is appropriate when
13 the pleadings, the discovery and disclosure materials on file, and any affidavits "show
14 there is no genuine issue as to any material fact and that the movant is entitled to judgment
15 as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). An issue is
16 "genuine" if there is a sufficient evidentiary basis on which a reasonable fact-finder could
17 find for the nonmoving party and a dispute is "material" if it could affect the outcome of the
18 suit under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49
19 (1986). Where reasonable minds could differ on the material facts at issue, however,
20 summary judgment is not appropriate. *See id.* at 250-51. "The amount of evidence
21 necessary to raise a genuine issue of material fact is enough 'to require a jury or judge to
22 resolve the parties' differing versions of the truth at trial.'" *Aydin Corp. v. Loral Corp.*, 718
23 F.2d 897, 902 (9th Cir. 1983) (quoting *First Nat'l Bank v. Cities Service Co.*, 391 U.S. 253,
24 288-89 (1968)). In evaluating a summary judgment motion, a court views all facts and
25 draws all inferences in the light most favorable to the nonmoving party. *See Kaiser Cement*
26 *Corp. v. Fischbach & Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986) (citation omitted).

27 The moving party bears the burden of showing that there are no genuine issues of
28 material fact. *See Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982). Once

1 the moving party satisfies Rule 56's requirements, the burden shifts to the party resisting
2 the motion to "set forth specific facts showing that there is a genuine issue for trial."
3 *Anderson*, 477 U.S. at 256. The nonmoving party "may not rely on denials in the pleadings
4 but must produce specific evidence, through affidavits or admissible discovery material, to
5 show that the dispute exists," *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir.
6 1991), and "must do more than simply show that there is some metaphysical doubt as to
7 the material facts." *Orr v. Bank of Am.*, 285 F.3d 764, 783 (9th Cir. 2002) (quoting
8 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)). "The mere
9 existence of a scintilla of evidence in support of the plaintiff's position will be insufficient[.]"
10 *Anderson*, 477 U.S. at 252.

11 **IV. DISCUSSION**

12 Following a *de novo* review of the R&Rs, relevant briefs, and other records in this
13 case, the Court finds good cause to accept and adopt Judge Cobb's R&Rs. The Court will
14 first address Plaintiff's Eighth Amendment deliberate indifference arguments, then will turn
15 to his ADA discrimination and retaliation claims.

16 **A. Eighth Amendment Deliberate Indifference**

17 Judge Cobb recommends that Plaintiff's motion for partial summary judgment (ECF
18 No. 76) be denied as there remains a genuine dispute of material fact of whether
19 Defendant Dr. Romeo Aranas was deliberately indifferent to Plaintiff's serious medical
20 needs in violation of the Eighth Amendment. (ECF No. 100 at 20-26.) The primary dispute
21 of fact is whether Plaintiff was denied surgery because of the NDOC's policies, or because
22 it was not medically necessary or urgent. (*Id.* at 23.) There are also disputes as to whether
23 Plaintiff suffered further injury from delayed surgery and whether the NDOC has in effect
24 a "one good eye" policy. (*Id.* at 24-25.) Plaintiff's objection merely reiterates that Dr. Aranas
25 could not have relied on Dr. Seljestad's opinion because Dr. Aranas "rubberstamp[ed]
26 grievance denials," thus evidencing deliberate indifference. (ECF No. 103 at 21-23.)
27 Plaintiff further argues that forcing him to wait 20 years for cataract surgery is "patently
28 unreasonable" in light of his serious medical condition. (*Id.* at 23-24.) While the Court is

1 sympathetic to Plaintiff's situation, the Court nevertheless agrees with Judge Cobb.

2 The Eighth Amendment prohibits the imposition of cruel and unusual punishment
3 and "embodies 'broad and idealistic concepts of dignity, civilized standards, humanity, and
4 decency.'" *Estelle v. Gamble*, 429 U.S. 97, 102 (1976). A prison official violates the Eighth
5 Amendment when he or she acts with "deliberate indifference" to the serious medical
6 needs of an inmate. *Farmer v. Brennan*, 511 U.S. 825, 828 (1994). "To establish an Eighth
7 Amendment violation, a plaintiff must satisfy both an objective standard—that the
8 deprivation was serious enough to constitute cruel and unusual punishment—and a
9 subjective standard—deliberate indifference." *Snow v. McDaniel*, 681 F.3d 978, 985 (9th
10 Cir. 2012).

11 Here, the dispute between the parties is over the deliberate indifference prong. To
12 satisfy the deliberate indifference prong, a plaintiff must show "(a) a purposeful act or
13 failure to respond to a prisoner's pain or possible medical need and (b) harm caused by
14 the indifference." *Id.* "Indifference may appear when prison officials deny, delay or
15 intentionally interfere with medical treatment, or it may be shown by the way in which
16 prison physicians provide medical care." *Id.* (internal quotations omitted). When an inmate
17 alleges delay of medical treatment evinces deliberate indifference, the inmate must show
18 the delay led to further injury. *See Shapley v. Nev. Bd. of State Prison Comm'rs*, 766 F.2d
19 404, 407 (9th Cir. 1985) (holding that "mere delay of surgery, without more, is insufficient
20 to state a claim of deliberate medical indifference"). Additionally, "[a] difference of opinion
21 between a prisoner-patient and prison medical authorities regarding treatment does not
22 give rise to a § 1983 claim." *Franklin v. Or., State Welfare Div.*, 662 F.2d 1337, 1344 (9th
23 Cir. 1981).

24 The NDOC's Medical Directive ("MD") 123.03 states in part the following:

- 25 1. Inmate patients with a cataract that causes visual impairment
26 incompatible with the ability to perform the required tasks of
27 daily living in their current living environment may be
28 considered for removal of such cataract.
2. There must be documentation of a best corrected visual acuity
of less than 20/60 in both eyes with current (less than 6
months) refraction.

1 (ECF No. 76-4 at 6.)² Judge Cobb prudently noted that MD 123.03 is essentially a “one
2 good eye” policy because an inmate is not eligible for cataract surgery if he or she has a
3 normal (or above 20/60) visual acuity in one eye. (ECF No. 100 at 24-25.) The Ninth Circuit
4 Court of Appeals has previously found a “blanket, categorial denial of medically indicated
5 surgery solely on the basis of an administrative policy that ‘one eye is good enough for
6 prison inmates’ is the paradigm of deliberate indifference.” *Colwell v. Bannister*, 763 F.3d
7 1060, 1063 (9th Cir. 2014). But Plaintiff has not presented any concrete evidence that Dr.
8 Aranas excluded him from cataract surgery because of, or “solely” because of, MD 123.03.

9 But neither is there sufficient evidence in the record, particularly when viewed in
10 the light most favorable to the nonmoving party Dr. Aranas, to conclude with certainty that
11 Dr. Aranas denied surgery to Plaintiff because it was not medically necessary or urgent.
12 On November 10, 2016, Dr. Aranas issued a response denying Plaintiff’s second-level
13 grievance requesting treatment. (ECF No. 93-5.) He explicitly stated that he had reviewed
14 Plaintiff’s charts, as well as the first-and second-level grievances. (*Id.*) Dr. Aranas’s
15 response also indicated that Plaintiff had multiple visits with providers and specialists,
16 Plaintiff’s 1999 gunshot injury did not qualify as urgent care or life threatening, and Plaintiff
17 had recently seen an eye specialist who made no mention of surgery. (*Id.*) Dr. Aranas
18 further ordered Plaintiff for a follow-up at the eye clinic in one year. (*Id.*)

19 At that time, evidence existed that Plaintiff had a cataract in his right eye and
20 removal was recommended with intraocular lens to the right eye. (ECF Nos. 76-6 at 9; 76-
21 4 at 20.) Medical progress notes dated October 4, 2002 mentioned Plaintiff had a severe
22 right lens cataract and recommended consult and cataract surgery. (ECF No. 76-5 at 10.)
23 A letter dated June 2, 2016 from Dr. Fischer stated Plaintiff needed a strabismus surgery
24 to correct the problem with his right eye and recommend Dr. Hong for the procedure. (ECF
25 No. 93-6.) There were also medical notes from March 11, 2002 stating Plaintiff was

27 ²The Court notes that the copy of MD 123 submitted by Plaintiff was effective March
28 2019. This version and the language cited may not have been the exact language relevant
from the time Plaintiff began the grievance process up until this version of MD 123 became
effective.

1 “[a]dvised that probably nothing can be done”³ regarding the damaged right eye. (ECF No.
2 76-4 at 22.) Conversely, a February 25, 2016 report by Dr. Seljestad, an optometrist,
3 appears to state that Plaintiff’s traumatic cataract and second gunshot wound to the eye
4 was “stable.” (ECF No. 93-1.) Plaintiff disclosed via an informal grievance in March 2016
5 that Dr. Seljestad told Plaintiff that he would never see out of his eye again. (See ECF No.
6 93-2 at 4.)

7 Nearly three years after Dr. Aranas’s November 10, 2016 grievance response
8 denying Plaintiff’s treatment request and more than three years after Dr. Fischer’s June 2,
9 2016 recommendation, Plaintiff eventually saw Dr. Hong on September 25, 2019. (ECF
10 No. 93-7.) A fax from Dr. Hong dated October 28, 2019 stated: “Cataracts in both eyes,
11 right worse than left. *Not* urgent; elective surgery.” (ECF No. 93-8 at 2 (emphasis in
12 original).) In the end, Plaintiff received cataract surgery on June 30, 2020, which was
13 unsuccessful in restoring Plaintiff’s vision. (ECF No. 93-9 at 7.)

14 Based on the evidence provided, there is a dispute as to whether Plaintiff’s surgery
15 was medically necessary or urgent. Whether the 20 years that Plaintiff had to wait for his
16 surgery was “patently unreasonable” in light of his serious medical condition depends in
17 part on resolving that dispute. It is worth mentioning that Dr. Aranas—the sole Defendant
18 in this claim—became the NDOC’s medical director in 2013. Nevertheless, it is evident
19 that several years have passed from the time Plaintiff sought eye surgery to when he
20 ultimately received it. Because a dispute remains, the Court cannot find that Dr. Aranas
21 was deliberately indifference because Plaintiff waited “20 years” for surgery. A rational
22 trier of fact could reasonably find that Dr. Aranas did not act with deliberate indifference.

23 As to Plaintiff’s argument that Dr. Aranas was deliberately indifferent because he
24 “merely signs ‘prepared responses’ by ‘grievance responders’” (ECF No. 103 at 21 (citing
25 Dr. Aranas’s interrogatory responses at ECF No. 76-3 at 10)) to conclude that he did not
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27 ³The Court notes that it is unclear, given the nature of this case, whether “probably
28 nothing can be done” is because it is medically impossible to correct the damaged eye or
because of specific policies and procedures present an impossibility for Plaintiff to receive
surgery to correct the damaged eye.

1 rely on Dr. Seljestad's opinion in denying Plaintiff surgery, the Court does not find Plaintiff's
2 argument convincing. The Court reviewed *de novo* Dr. Aranas's interrogatory responses
3 (ECF No. 76-3), which was cited to infer that Dr. Aranas rubberstamped grievance denials,
4 thereby evidencing deliberate indifference. In the interrogatories, Dr. Aranas was asked to
5 explain if his denial was based on Plaintiff having a self-inflicted gunshot injury. (*Id.* at 10.)
6 Dr. Aranas stated that he "signs the prepared responses by designated grievance
7 responders" and that "the denial had nothing to do with Plaintiff's self-inflicted gunshot
8 injury." (*Id.* (internal quotes omitted).) The Court does not infer from Dr. Arana's response
9 what Plaintiff posits with his argument, which is that Dr. Aranas was deliberately indifferent.

10 The Court agrees with Judge Cobb that there is a dispute of material fact whether
11 Dr. Aranas's denial of—or his delay in allowing—Plaintiff's requested surgery constitutes
12 "deliberate indifference" to Plaintiff's serious medical needs in light of medical evidence,
13 and whether said delay caused Plaintiff further injury. Plaintiff therefore has not shown he
14 is entitled to summary judgment as there is a genuine issue as to material fact. See
15 *Celotex Corp.*, 477 U.S. at 322. Accordingly, the Court adopts Judge Cobb's
16 recommendation with respect to Plaintiff's Eighth Amendment claim of deliberate
17 indifference and denies Plaintiff's motion for partial summary judgment.

18 **B. ADA Discrimination**

19 Judge Cobb recommends that Plaintiff's motion for partial summary judgment (ECF
20 No. 76) be denied because there is an obvious dispute of material fact regarding the basis
21 for Plaintiff's surgery denial, as explained above, which implicates whether he has an
22 actionable Title II ADA discrimination claim. (ECF No. 100 at 26-35.) Similar to the Court's
23 explanation of Plaintiff's Eighth Amendment deliberate indifference claim, it remains
24 unclear whether Plaintiff was denied surgery due to intentional discrimination of monocular
25 blindness disability—a violation of the ADA—or due to the surgery not medically
26 necessary, urgent, or helpful to Plaintiff. (*Id.* at 33.) Plaintiff objects and argues that he
27 does not need to show he was denied surgery if he was subjected to discrimination, which
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1 includes a failure to reasonably accommodate his disability. (ECF No. 103 at 13.) The
2 Court, however, is not convinced here by Plaintiff's argument.

3 Title II of the ADA provides that "no qualified individual with a disability shall, by
4 reason of such disability, be excluded from participation in or be denied the benefits of the
5 services, programs, or activities of a public entity, or be subjected to discrimination by any
6 such entity." 42 U.S.C. § 12132. Title II includes "an affirmative obligation for public entities
7 to make benefits, services, and programs accessible to people with disabilities." *Updike v.*
8 *Multnomah Cty.*, 870 F.3d 939, 949 (9th Cir. 2017). "To prove that a public program or
9 service violated Title II of the ADA, a plaintiff must show: (1) he [or she] is a 'qualified
10 individual with a disability' (2) he [or she] was either excluded from participation in or
11 denied the benefits of a public entity's services, programs, or activities, or was otherwise
12 discriminated against by the public entity; and (3) such exclusion, denial of benefits, or
13 discrimination was by reasons of his [or her] disability." *Duvall v. Cty. of Kitsap*, 260 F.3d
14 1124, 1135 (9th Cir. 2001) (citing *Weinreich v. L.A. Cty. Metro. Transp. Auth.*, 114 F.3d
15 976, 978 (9th Cir. 1997)). To recover monetary damages, plaintiff must prove intentional
16 discrimination by showing defendant acted with "deliberate indifference." *See id.* at 1138.
17 "Deliberate indifference requires both knowledge that a harm to a federally protected right
18 is substantially likely, and failure to act upon [] the likelihood." *Id.* at 1139 (citation omitted).

19 Here, Plaintiff's argument presumes the existence of a discriminatory basis for
20 surgery denial and ignores the key point in Judge Cobb's analysis which is that Plaintiff
21 has not shown that "the denial of surgery was *because of* his disability." (ECF No. 100 at
22 33 (emphasis added).) It remains arguable that Defendant did not fail to act, but rather
23 determined based on medical evidence that surgery was not medically necessary, urgent,
24 or helpful to Plaintiff. At the summary judgment phase, Plaintiff must show the
25 discrimination—here, failure to reasonably accommodate monocular blindness via
26 surgery—"was by reasons of his disability." *See Duvall*, 260 F.3d at 1135. Plaintiff has not
27 done so and the Court thus agrees with Judge Cobb that Plaintiff is not entitled to summary
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1 judgment as there remains a genuine dispute of material fact. *See Celotex Corp.*, 477 U.S.
2 at 322. Accordingly, Plaintiff's motion for partial summary judgment is denied.

3 C. ADA Retaliation

4 Judge Cobb recommends that Plaintiff's motion for partial summary judgment (ECF
5 No. 75) on the ADA retaliation claim be denied and that the claim proceed to a bench trial.
6 (ECF No. 99 at 7-16.) He found that there is a dispute of fact regarding whether Plaintiff
7 was disciplined by the NDOC for exercising Plaintiff's rights or for abuse of the grievance
8 process under the NDOC's Administrative Regulation ("AR") 740. (*Id.* at 14.) Plaintiff
9 objects by arguing that there are no issues of fact in dispute. (ECF No. 101 at 4-5.) More
10 specifically, Plaintiff recites undisputed facts and asserts that the filing of his ADA
11 grievance was the "but-for cause" of the NDOC's disciplinary action against Plaintiff. (*Id.*
12 at 7.) Plaintiff points out that the "NDOC does not deny that had [Plaintiff] not filed an ADA
13 grievance he would not have been disciplined." (*Id.* at 7, n.18, n.19.) The Court, however,
14 finds that Plaintiff has not met his burden of establishing that the NDOC's reasoning for
15 the adverse action was a pretext for ADA discrimination.

16 The Ninth Circuit Court of Appeals applies the *McDonnell Douglas* burden-shifting
17 standard to analyze ADA retaliation claims asserted based on circumstantial evidence.
18 *See, e.g., T.B. v. San Diego Unified Sch. Dist.*, 806 F.3d 451, 473 (9th Cir. 2015) (applying
19 *McDonnell Douglas* to a motion for summary judgment). Under *McDonnell Douglas Corp.*
20 *v. Green*, a plaintiff must first establish a prima facie case of retaliation as set forth below.
21 411 U.S. 792, 802 (1973). If the plaintiff is successful, the burden shifts to the defendant
22 to successfully articulate a legitimate, non-retaliatory reason for their actions, which then
23 shifts back to the plaintiff to show the defendant's reason is a pretext or cover for its true
24 retaliatory motive. *See id.* at 802-05.

25 A plaintiff bringing an Article II ADA retaliation claim must show "(a) that he or she
26 was engaged in a protected activity, (b) that he or she suffered an adverse action, and (c)
27 that there was a *causal link* between the two." *Emeldi v. Univ. of Or.*, 673 F.3d 1218, 1223
28 (9th Cir. 2012) (emphasis added) (citing *Brown v. City of Tucson*, 336 F.3d. 1181, 1192

1 (9th Cir. 2003)); *see also* *T.B.*, 806 F.3d at 473 (holding that *McDonnell Douglas* standard
2 applies to Article II ADA retaliation claims). The “causal link” between the two consist of a
3 more stringent test of but-for causation. *Id.* (citing *Uni. of Tex. Sw. Med. Ctr. v. Nassar*,
4 570 U.S. 338, 352 (2013)).

5 Here, Plaintiff has established a prima facie case of retaliation. Plaintiff engaged in
6 a protective activity by filing a second grievance in an attempt to exhaust his ADA claim.
7 (ECF No. 75-2 at 10-14.) Plaintiff suffered an adverse action when the NDOC disciplined
8 Plaintiff with 15-days loss of canteen privileges for filing the second grievance. (ECF No.
9 92-9 at 3.) Between the time Plaintiff filed his first grievance in 2016 to his second
10 grievance in 2019, Plaintiff also filed this federal action against the NDOC. (See ECF No.
11 1-1.) The Court finds that there is a causal link between the protective activity and the
12 adverse action. Plaintiff has thus established a prima facie case and the burden shifts to
13 the NDOC to articulate a legitimate reason for the adverse action.

14 The NDOC denies retaliation and contends the adverse action was proper because
15 Plaintiff was abusing the grievance process by filing a duplicate grievance. (ECF No. 92
16 at 8-9.) According to the NDOC, Plaintiff violated AR 740.04 because his “second
17 grievance arouse out of the same claim and requested the same remedy.” (*Id.* at 8.) This
18 is in violation of section 2.B of AR 740.04, which states that “[s]pecific claims or incidents
19 previous filed by the same inmate” is considered an abuse of the inmate grievance
20 procedure. (*Id.* (citing AR 740.04 2.B.)) Abuse under this administrative regulation results
21 in “the grievance being not accepted and disciplinary action may be taken” by the NDOC.⁴
22 See AR 740.04 1. The Court finds that the NDOC has articulated a non-retaliatory reason
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24 ⁴The Court notes that AR 740.04 1 states that disciplinary action *may* be taken by
25 the NDOC. The Notice of Disciplinary Charges dated July 22, 2019 states, “[Plaintiff] is an
26 experienced grievance writer who well understands what he is doing by filing duplicate,
27 frivolous grievances. He understands that abusing the grievance process can lead to
28 disciplinary action.” (ECF No. 75-3 at 14.) A summary of a July 30, 2019 hearing regarding
Plaintiff’s alleged violation includes a preliminary statement by Plaintiff that states in part,
“This is not a duplicate claim, this is america’s [*sic*] disability claim that my perosn [*sic*] that
I am requesting as counsel is Terry Keleer Cooper [*sic*] who instructed me to file for my
handicap.” (ECF No. 92-9 at 5.) Plaintiff was nevertheless found guilty of abuse of the
grievance process and given 15 days canteen loss. (*Id.* at 3.)

1 for its actions, and therefore the burden shifts back to Plaintiff to evidence a pretext or
2 cover for its true retaliatory motive.

3 Plaintiff argues that, “had [Plaintiff] not filed an ADA grievance he would not have
4 been disciplined,” and thus “[t]he ADA grievance was the proximate cause and the cause
5 in fact of [Plaintiff’s] protective activity; but for [Plaintiff’s] filing of his ADA grievance he
6 would not have been disciplined.” (ECF No. 101 at 3.) Moreover, Plaintiff argues that the
7 NDOC’s administrative regulations—particularly AR 740—makes the grievance process
8 nearly impossible for inmates and renders Plaintiff “hopelessly doomed whichever way he
9 went.” (*Id.* at 17.) While the Court is sympathetic to the “catch-22” situation Plaintiff
10 arguably finds himself, in viewing the facts and drawing all inferences most favorable to
11 the nonmoving party, the Court finds that Plaintiff has not met his burden to show AR 740
12 is a pretext, or that application of AR 740 to discipline Plaintiff is a pretext, for the NDOC’s
13 retaliatory motive. *See McDonnell Douglas*, 411 U.S. at 804 (stating that Plaintiff must
14 show the reason provided by Defendant was pretext for an impermissible reason). The
15 Court therefore agrees with Judge Cobb that Plaintiff’s motion for partial summary
16 judgment should be denied with respect to Plaintiff’s ADA retaliation claim and will adopt
17 his recommendation. This claim will proceed to a bench trial.

18 **V. CONCLUSION**

19 The Court notes that the parties made several arguments and cited to several cases
20 not discussed above. The Court has reviewed these arguments and cases and determines
21 that they do not warrant discussion as they do not affect the outcome of the Motions before
22 the Court.

23 It is therefore ordered that the Reports and Recommendations of Magistrate Judge
24 William G. Cobb (ECF Nos. 99, 100) are accepted and adopted in full.

25 It is further ordered that Plaintiff’s motions for partial summary judgment (ECF Nos.
26 75, 76) are denied.

27 DATED THIS 17th Day of March 2021.

28 
MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE