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U.S. COURT OF APPEALS

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MICHAEL HUFTILE, Plaintiff - Appellant, v. L. C. MICCIO-FONSECA, Defendant - Appellee.	No. 09-17494 D.C. No. 2:03-cv-01522-FCD-DAD MEMORANDUM[*]

Appeal from the United States District Court
for the Eastern District of California
Frank C. Damrell, District Judge, Presiding

Submitted December 14, 2010 [**]

Before: GOODWIN, WALLACE, and THOMAS, Circuit Judges

Michael Huftile, a former civil detainee under California's Sexually Violent Predator Act, appeals pro se the district court's dismissal of his second amended complaint in this 42 U.S.C. § 1983 suit against Dr. L.C. Miccio-Fonseca in

[*] This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

connection with her evaluation of whether he was a "sexually violent predator" under California Welfare and Institutions Code § 6600(a)(1). This court reviews a district court's denial of a preliminary injunction for abuse of discretion and conclusions of law de novo. *Alliance for Wild Rockies v. Cottrell*, 622 F.3d 1045, 1049 (9th Cir. 2010). We affirm.

Huftile's complaint alleges three due process violations: (1) he was not given advance notice of the evaluation; (2) the evaluation was not audio recorded; and (3) Miccio-Fonseca's reliance on documents concerning his 1984 South Dakota conviction for raping his adopted daughter led to her faulty conclusion that it was a qualifying offense. The complaint seeks injunctive relief in the form of expungement of all references to the South Dakota conviction in Miccio-Fonseca's report. The district court dismissed the complaint because it failed to raise cognizable constitutional claims and because Huftile did not show immediate and irreparable harm.

On appeal, Huftile has explicitly abandoned all three claims, expressing a clear intent to "*not* put before this honorable court the [three] issues." To the extent he now seeks expungement based on other grounds, he has waived those arguments by not raising them in the district court. *See White v. Martel*, 601 F.3d 882, 885 (9th Cir. 2010).

Huftile also appeals what he believes was the district court's erroneous application to civil detainees of the heightened standard under 18 U.S.C. § 3626(a)(2).[1] The district court could not have applied the statute to Huftile because it did not issue an injunction. We need not consider whether § 3626(a)(2) applies to him.

We do not consider Huftile's "Notice of Reinstatement of Damages & Declaratory Relief" filed on August 3, 2010.

AFFIRMED.

[1]Section 3626(a)(2) requires a preliminary injunction "[i]n any civil action with respect to prison conditions" to be narrowly drawn, extend no further than necessary to correct the harm, and be the least intrusive means necessary to correct the harm.