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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

ELONZA JESSE TYLER,

Plaintiff,

v.

R. DAVIS, M.D., et al.,

Defendants.

CASE NO. 1:06-cv-00092-AWI-SMS PC

ORDER ADOPTING FINDINGS AND RECOMMENDATIONS

(Docs. 72 and 73)

ORDER DENYING PLAINTIFF 'S MOTION FOR PRELIMINARY INJUNCTION AND STAY, DISREGARDING PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT, GRANTING DEFENDANT DAVIS'S MOTION FOR SUMMARY JUDGMENT, AND REFERRING MATTER BACK TO MAGISTRATE JUDGE TO BE SET FOR TRIAL ON REMAINING CLAIM

(Docs. 59, 60, and 70)

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This is a civil rights action filed pursuant to 42 U.S.C. § 1983 by Plaintiff Elonza Jesse Tyler, a state prisoner proceeding pro se and in forma pauperis. At this juncture, this action is proceeding on Plaintiff's amended complaint, filed September 15, 2006, against Defendant Smith, a staff physician, and Defendant Davis, the former Chief Medical Officer, for acting with deliberate indifference to Plaintiff's serious medical needs, in violation of the Eighth Amendment. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72-302.

On November 19, 2009, the Magistrate Judge issued Findings and Recommendations recommending that Plaintiff's motion for a preliminary injunction and for a stay of these proceedings

1 be denied, Plaintiff's cross-motion for summary judgment be disregarded, and Defendant Davis's  
2 motion for summary judgment be granted. The parties were given thirty days within which to file  
3 Objections, and none were filed.

4 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a  
5 de novo review of this case. Having carefully reviewed the entire file, the Court finds the Findings  
6 and Recommendations to be supported by the record and by proper analysis.

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. The Findings and Recommendations, filed November 19, 2009, are adopted in full;
- 9 2. Plaintiff's motion for preliminary injunctive relief and for a stay, filed September 1,  
10 2009, is DENIED;
- 11 3. Plaintiff's cross-motion for summary judgment, filed April 3, 2009, is  
12 DISREGARDED;
- 13 4. Defendant Davis's motion for summary judgment, filed March 20, 2009, is  
14 GRANTED; and
- 15 5. This matter is referred back to the Magistrate Judge to set for jury trial on Plaintiff's  
16 remaining claim against Defendant Smith.

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18 IT IS SO ORDERED.

19 **Dated: January 8, 2010**

20 /s/ Anthony W. Ishii  
21 CHIEF UNITED STATES DISTRICT JUDGE  
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