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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

BRIAN HERRON,

Plaintiff,

vs.

D. WILTCHIK, et al.,

Defendants.

Case No.: 1:09-cv-02165 AWI JLT (PC)

ORDER CONSIDERING PLAINTIFF’S
OBJECTIONS AND REAFFIRMING THE
COURT’S ORDER ADOPTING THE
FINDINGS AND RECOMMENDATIONS IN
FULL

(Doc. 38)

_____ /

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action pursuant to 42 U.S.C. § 1983.

On November 18, 2011, the Court issued Findings and Recommendations dismissing certain claims and defendants from the litigation. (Doc. 31) Plaintiff was granted until December 12, 2011 to file objections. On the same day that the order was signed, the findings and recommendations were served on Plaintiff at his location of housing. Several days later, on November 22, 2011, Plaintiff filed a notice of change of address, which was dated November 19, 2011. (Doc. 32)

Plaintiff did not file objections to the findings and recommendations and on December 23, 2011, the Court adopted the Magistrate Judge’s findings and recommendations in full. (Doc. 34) This order was served on Plaintiff the same date. On January 3, 2012, Plaintiff filed a new notice of change of address, which was dated December 28, 2011. (Doc. 35) When the mail was returned as “undeliverable,” on January 6, 2012, the order was then re-served on Plaintiff at his new housing location. On January 13, 2012, Plaintiff filed his current request for an extension of time to allow him to file his objections to the findings and recommendation. (Doc. 36).

1 On January 18, 2012, the Court granted Plaintiff an extension of time until February 6,
2 2012 to file his objections. (Doc. 37) However, on that same date, Plaintiff, indeed, filed his
3 objections. (Doc. 38)

4 In his objections, Plaintiff disagrees with the Findings and Recommendations and
5 reiterates the same positions taken in the Third Amended Complaint. In doing so, he ignores that
6 in his Second Amended Complaint he *admitted* that he was provided medical treatment and
7 medication but that this treatment, in his view, was insufficient. (Doc. 31 at 9) Thus, the
8 Magistrate Judge found properly that this difference of opinion, does not state a cause of action
9 for deliberate indifference to a serious medical condition.

10 Likewise, Plaintiff's citation to state regulations in his objections does not help his cause.
11 Even if the Court assumes that these violations occurred, as the Court must at this stage, this does
12 not demonstrate a violation of the constitutional minimums assured by the Eighth Amendment.
13 At most, it demonstrates a violation of state law. Thus, in accordance with the provisions of 28
14 U.S.C. § 636 (b)(1)(C) and Britt v. Simi Valley United School Dist., 708 F.2d 452, 454 (9th Cir.
15 1983), this Court has conducted a *de novo* review of the case.

16 Having carefully reviewed the entire file once again, the Court finds that the findings and
17 recommendation are supported by the record and by proper analysis.

18 Accordingly, IT IS HEREBY ORDERED that:

- 19 1. The December 23, 2011 order (Doc. 34) adopting the findings and
20 recommendations filed on November 18, 2011 (Doc. 31), is reaffirmed.
- 21 2. The order dismissing the matter with prejudice in favor of Defendants John Doe
22 Chief Medical Officer, Dr. Hemela, Dr. Ashby, Dr. Klang and John Doe
23 Correctional Officer is unchanged.

24
25 IT IS SO ORDERED.

26 Dated: January 24, 2012

27 
28 CHIEF UNITED STATES DISTRICT JUDGE