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

VENCIL C. GREEN,
Plaintiff,
vs.
DR. LARRY N. FERGUSON, et al.,
Defendants.

Case No. 1:10-cv-01768 AWI JLT (PC)
ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS
(Docs. 3, 11 & 13)

_____/

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On August 8, 2011, the Magistrate Judge screened Plaintiff’s original complaint and found that it states cognizable claims only with respect to certain defendants. (Doc. 10.) The Magistrate Judge therefore ordered Plaintiff to either file an amended complaint attempting to cure the deficiencies in his incognizable claims or notify the Court that he wished to proceed only on his cognizable claims. (Id.) In response, Plaintiff timely notified the Court on August 12, 2011 that he wished to proceed only on the claims found cognizable by the Court. (Doc. 12.) Accordingly, on August 17, 2011, the Magistrate Judge issued findings and recommendations dismissing Plaintiff’s incognizable claims. (Doc. 13.)

In addition, on August 8, 2011, the Magistrate Judge issued findings and recommendations recommending that Plaintiff’s motion for a preliminary injunction be denied. (Doc. 11.) The Magistrate Judge explained in this regard that Plaintiff has not met his burden of proving that preliminary relief is warranted and that Plaintiff appears to be precluded from injunctive relief in this action because he is a class member in Coleman v. Schwarzenegger, 2:90-cv-0520 LKK JFM (E.D. Cal.). See McNeil v. Guthrie, 945 F.2d 1163, 1165 (10th Cir. 1991) (class members must bring “claims for equitable relief

1 through the class representative until the class action is over or the consent decree is modified.”).

2 Both findings and recommendations contained notice to Plaintiff that any objections to the
3 findings and recommendations were to be filed within fourteen days of being served with the findings
4 and recommendations. As of the date of this order, Plaintiff has not filed any objections.

5 The Court has conducted a de novo review of this case in accordance with 28 U.S.C. §
6 636(b)(1)(C) and Local Rule 304. Having carefully reviewed the entire file, the Court finds both
7 findings and recommendations to be supported by the record and proper analysis.

8 Accordingly, **IT IS HEREBY ORDERED** that:

- 9 1. The findings and recommendations issued August 8, 2011 are **ADOPTED** in full;
- 10 2. Plaintiff’s September 27, 2010 motion for a preliminary injunction (Doc. 3) is **DENIED**;
- 11 3. The findings and recommendations issued August 17, 2011 are **ADOPTED** in full;
- 12 4. Plaintiff’s Eighth Amendment inadequate medical care claims against Defendants
13 Obaiza, Walker, and Wilson are **DISMISSED** for failure to state a claim;
- 14 5. Plaintiff’s First Amendment access to the courts claim against Defendant Ferguson is
15 **DISMISSED** for failure to state a claim;
- 16 6. Plaintiff’s requests for injunctive relief on his Eighth Amendment inadequate medical
17 care claims are **DISMISSED**;
- 18 7. Plaintiff’s requests for monetary damages on his official capacity claims are
19 **DISMISSED**; and
- 20 8. This action shall proceed on the following claims: (1) inadequate medical care in
21 violation of the Eighth Amendment against Defendants Ferguson and Lackovic; and (2)
22 retaliation in violation of the First Amendment against Defendants Ferguson and
23 Lackovic.

24 IT IS SO ORDERED.

25 Dated: September 20, 2011

26 
27 CHIEF UNITED STATES DISTRICT JUDGE
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