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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ELONZA JESSE TYLER,

Plaintiff,

v.

ALAMEIDA, et al.,

Defendants.

CASE NO. 1:04-cv-06638-LJO-BAM PC

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS REGARDING
PLAINTIFF’S MOTION FOR SUMMARY
JUDGMENT

(ECF No. 174, 179)

Plaintiff Elonza Jesse Tyler is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Following remand by the Ninth Circuit of Appeal, this action is proceeding against Defendant Smith for deliberate indifference 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 302.

On February 25, 2013, the Magistrate Judge issued [Findings and Recommendations](#) that Plaintiff’s motion for summary judgment be denied. The Findings and Recommendations were served on the parties and contained notice that any objections to the Findings and Recommendations were to be filed within twenty-one (21) days. On March 8, 2013, Plaintiff filed [objections](#).

In his objections, Plaintiff complains that the Magistrate Judge failed to consider his claim that Defendant Smith was deliberately indifferent to a serious risk of harm. Contrary to Plaintiff’s complaint, the Magistrate Judge considered Plaintiff’s claim of deliberate indifference, but found a genuine dispute of material fact regarding the question of whether Defendant Smith was

1 responsible for the alleged delay in receiving an orthopedic consult and surgery. (ECF No. 189, p.
2 9.) Moreover, Plaintiff fails to address the Magistrate Judge’s determination that the lack of essential
3 discovery available at the time of Defendant’s opposition provided a separate and independent basis
4 to deny Plaintiff’s motion for summary judgment. (ECF No. 189, p. 10.)

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

9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. The Findings and Recommendations, issued February 25, 2013, are adopted in full;
11 and
- 12 2. Plaintiff’s motion for summary judgment is DENIED.

13
14 IT IS SO ORDERED.

15 **Dated: March 14, 2013**

/s/ Lawrence J. O’Neill
UNITED STATES DISTRICT JUDGE