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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MELVIN RAY BRUMMETT, JR.,

Plaintiff,

v.

SILLEN, et al.,

Defendants.

CASE NO. 1:06-cv-01255-OWW-DLB PC

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
CERTAIN CLAIMS AND DEFENDANTS

(Doc. 23, 24)

_____ /

Order

Plaintiff Melvin Ray Brummett, Jr. (“plaintiff”) is a state prisoner proceeding pro se in this 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 March 18, 2010, the Magistrate Judge filed a [Findings and Recommendations](#) herein which was served on plaintiff and which contained notice to plaintiff that any objection to the Findings and Recommendations was to be filed within thirty days. Plaintiff filed an [Objection](#) to the Findings and Recommendations on April 22, 2010.

In accordance with the provisions of 28 U.S.C. § 636(b)(1), this Court has conducted a de novo review of this case. Having carefully reviewed the entire file, the Court finds the Findings and Recommendations to be supported by the record and by proper analysis. Plaintiff requests an opportunity to file a fourth amended complaint, contending that he submitted documentation that supports his claims against Defendant head pharmacist Doe 2. Plaintiff contends that the Magistrate Judge initially found Plaintiff’s claims against Doe 2 to be cognizable when screening Plaintiff’s

1 second amended complaint and should not change its findings. The Court may revise any order that
2 adjudicates fewer than all the claims of fewer than all the parties at any time prior to judgment
3 adjudicating all claims and all parties' rights and responsibilities. Fed. R. Civ. P. 54(b). The
4 Magistrate Judge found that Plaintiff did not state a cognizable claim against Defendant Doe 2, and
5 the undersigned finds this is supported by the record and proper analysis. Plaintiff has had three
6 opportunities to amend, and further leave to amend will not be granted at this time.

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. The Findings and Recommendations, filed March 18, 2010, is adopted in full;
- 9 2. This action proceed on Plaintiff's third amended complaint, filed September 2, 2009,
10 against Defendants S. Kaur and Doe 1 for violation of the Eighth Amendment and
11 negligence; and
- 12 3. Defendants McGuinness and Doe 2 are dismissed from this action for failure to state
13 a claim upon which relief may be granted.

14
15 IT IS SO ORDERED.

16 **Dated:** April 27, 2010

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE