

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

HENRY MANSON III,

1:07-cv-00437-OWW-GSA-PC

Plaintiff,

ORDER ADOPTING FINDINGS  
AND RECOMMENDATIONS  
(Doc. 39.)

vs.

DAVID G. SMITH, M.D., et al.,

ORDER GRANTING IN PART AND  
DENYING IN PART DEFENDANTS'  
MOTION TO DISMISS  
(Doc. 20.)

Defendants.

ORDER DISMISSING DEFENDANT  
JOHNSTON AND PLAINTIFF'S STATE  
CLAIMS FROM THIS ACTION

\_\_\_\_\_ /

Henry Manson III (“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 72-302.

On December 8, 2009, findings and recommendations were entered, recommending that defendants' motion to dismiss, filed on March 13, 2009, be granted in part and denied in part, dismissing defendant Johnston from this action, and dismissing plaintiff's state claims from this action with prejudice. (Doc. 39.) The parties to this action were granted an opportunity to file objections to the findings and recommendations within thirty days. More than thirty days have passed, and no objections have been filed.

1 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 73-  
2 305, this court has conducted a de novo review of this case. Having carefully reviewed the entire  
3 file, the court finds the findings and recommendations to be supported by the record and proper  
4 analysis.

5 Accordingly, THE COURT HEREBY ORDERS that:

- 6 1. The Findings and Recommendations issued by the Magistrate Judge on  
7 December 8, 2009, are ADOPTED in full;
- 8 2. Defendants' motion to dismiss, filed on March 13, 2009, is GRANTED in part  
9 and DENIED in part;
- 10 3. Defendants' motion to dismiss the allegations against defendant Smith, based  
11 on Plaintiff's failure to exhaust, is DENIED;
- 12 4. Defendants' motion to dismiss the allegations against defendant Johnston,  
13 based on Plaintiff's failure to exhaust, is GRANTED;
- 14 5. Defendants' motion to dismiss Plaintiff's state claims, with prejudice, based  
15 on Plaintiff's failure to file his complaint within six months after his  
16 government claim was denied, is GRANTED;
- 17 6. Defendant Johnston is DISMISSED from this action;
- 18 7. Plaintiff's state claims are DISMISSED from this action, with prejudice;
- 19 8. This action now proceeds only on Plaintiff's claims for inadequate medical  
20 care in violation of the Eighth Amendment against defendants Smith and Brar;  
21 and
- 22 9. The Clerk is directed to reflect the dismissal of defendant Johnston from this  
23 action on the Court's docket.

24 IT IS SO ORDERED.

25 **Dated: January 26, 2010**

26 **/s/ Oliver W. Wanger**  
27 **UNITED STATES DISTRICT JUDGE**