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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

THOMAS D. BRALEY,

CASE NO. 1:07-cv-01423-OWW-SMS

Plaintiff,

ORDER ADOPTING FINDINGS AND
RECOMMENDATION AND DISMISSING
CERTAIN CLAIMS AND DEFENDANTS

v.

WASCO STATE PRISON, et al.,

(ECF No. 61, 62)

Defendants.

Plaintiff Thomas D. Braley (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis 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 August 24, 2011, the Magistrate Judge issued [findings and recommendations](#) recommending dismissal of certain claims and defendants. Plaintiff was given thirty days to file objections and [objections](#) were filed on September 27, 2011. In Plaintiff’s objections he complains that the findings and recommendations misstated the date of the x-ray that he received after he was injured. A review of the second amended complaint shows that Plaintiff stated that he was x-rayed on September 20, 2007, however his objection states the x-ray occurred on September 21, 2007. The difference of one day in receiving the x-ray would not change the findings that Plaintiff failed to state a cognizable claim for deliberate indifference to his medical needs.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the undersigned has conducted a de novo review of this case. Having carefully reviewed the entire file, the undersigned finds the findings and recommendations to be supported by the record and by proper analysis.

1 Accordingly, IT IS HEREBY ORDERED that:

- 2 1. The findings and recommendations recommending, filed August 24, 2011, is adopted
3 in full;
- 4 2. This action is proceeding on the second amended complaint, filed June 10, 2011,
5 against Defendants Markmann and L.A. Miller for failure to protect in violation of
6 the Eighth Amendment;
- 7 3. Defendants Williams, Martinez, Massa, George, Thompson, Wasco State Prison, C.
8 Cooper, and M. Hunter are dismissed from this action, with prejudice, based upon
9 Plaintiff's failure to state a cognizable claim against them;
- 10 4. Plaintiff's remaining Eighth Amendment claims and claim for injunctive relief are
11 dismissed, with prejudice, for Plaintiff's failure to state a claim; and
- 12 5. This action is referred back to the Magistrate Judge for further proceedings.

13
14 IT IS SO ORDERED.

15 **Dated: September 30, 2011**

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE