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

DARRELL LOWE,

Plaintiff,

vs.

WILLIAM J. MCGUINNESS, et al.,

Defendants.

Case No. 1:09-cv-00712 AWI JLT (PC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS

ORDER DENYING PLAINTIFF’S MOTION  
FOR SUMMARY JUDGMENT

(Documents #28 & #65)

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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 25, 2011, the Magistrate Judge issued findings and recommendations recommending that Plaintiff’s motion for summary judgment be denied. (Doc. 65.) The Magistrate Judge explained that Plaintiff failed to meet his burden on summary judgment of conclusively proving that Defendant McGuinness acted with deliberate indifference to Plaintiff’s need for back treatment. (Id. at 5-7.) In regard to Defendant Call, the Magistrate Judge explained that there was sufficient evidence to create a genuine issue of material fact as to whether Defendant Call ordered other nurses to disregard Plaintiff’s need for medical attention. (Id. at 7-8.) Lastly, the Magistrate Judge explained that Plaintiff’s motion for summary judgment against Defendant Rahimifar was procedurally premature because Defendant Rahimifar has yet to file an answer in this case. (Id. at 8.)

1 The findings and recommendations contained notice that the parties could file objections to the  
2 findings and recommendations within fourteen days of being served. As of the date of this order, the  
3 parties have not filed objections to the findings and recommendations.<sup>1</sup>

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

7 Accordingly, it is **HEREBY ORDERED** that:

- 8 1. The findings and recommendations issued August 25, 2011 are **ADOPTED** in full;
- 9 2. Plaintiff's February 3, 2011 motion for summary judgment (Doc. 28) is **DENIED** as  
10 follows:

11 a. Plaintiff's motion for summary judgment is **DENIED** with respect to  
12 Defendants McGuinnes and Call; and

13 b. Plaintiff's motion for summary judgment is **DENIED WITHOUT**  
14 **PREJUDICE** with respect to Defendant Rahimifar.

15 IT IS SO ORDERED.

16 Dated: September 29, 2011

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18 CHIEF UNITED STATES DISTRICT JUDGE

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<sup>1</sup> Plaintiff filed a motion for an extension of time to file objections. However, the Court denied Plaintiff's request  
on September 16, 2011. (Doc. 68.)