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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY CRAIG HUCKABEE,

Plaintiff,

v.

DR. MCGUINESS, DR. WU, and RN
JIMENEZ,

Defendants.

No. 1:09-cv-00749-DAD-BAM (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND GRANTING
DEFENDANTS WU AND JIMENEZ'S
MOTION FOR SUMMARY JUDGMENT

(Doc. No. 288)

Plaintiff Anthony Craig Huckabee is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This case proceeds on plaintiff's fifth amended complaint against defendants Wu, Jimenez, and McGuinness for deliberate indifference to plaintiff's serious medical needs 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 5, 2020, the assigned magistrate judge issued findings and recommendations recommending that the defendants motion for summary judgment filed on behalf of defendants

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1 Wu and Jimenez (Doc. No. 284) be granted.¹ (Doc. No. 288.) Specifically, the magistrate judge
2 found that the undisputed evidence before the court on summary judgment established that: (1)
3 defendant Wu did not act with deliberate indifference to plaintiff’s serious medical needs when he
4 reduced the strength of plaintiff’s glaucoma medication dosage; and (2) defendant Jimenez did
5 not have the authority to refill prescriptions and thus could not have been deliberately indifferent
6 to plaintiff’s serious medical needs in the manner plaintiff claims. (*Id.* at 9–13.) The findings
7 and recommendations contained notice that any objections thereto were to be filed within
8 fourteen (14) days after service. (*Id.* at 15.) Following the granting of an extension of time to do
9 so, plaintiff filed objections on February 20, 2020. (Doc. No. 292.)

10 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
11 *de novo* review of this case. Having carefully reviewed the entire file, including plaintiff’s
12 objections, the court finds the findings and recommendations to be supported by the record and
13 by proper analysis.

14 Similar to plaintiff’s position as stated in his opposition to the pending motion for
15 summary judgment (*see* Doc. No. 285), in his objections plaintiff contends that the undisputed
16 facts the magistrate judge relied on are not undisputed because they have not been decided by a
17 jury. (*See* Doc. No. 292 at 1–5.) As the findings and recommendations correctly point out,
18 however, “[a] motion for summary judgment ‘pierces’ the pleadings and puts the opponent to the
19 test of affirmatively coming forward with sufficient evidence for its claims or defenses to create a
20 genuine issue for trial.” (Doc. No. 288) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 325
21 (1986)). Neither plaintiff’s objections to the pending findings and recommendations nor his
22 opposition to the pending motion for summary judgment puts forth any evidence establishing a
23 disputed issue of material fact or creating a genuine issue for trial. Moreover, the objections do
24 not otherwise dispute the magistrate judge’s findings and recommendations.

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26 ¹ Defendant McGuiness has filed a separate motion for summary judgment (Doc. No. 277) which
27 the magistrate judge has addressed in separate findings and recommendations (Doc. No. 291).
28 The objection period with respect to the findings and recommendations addressing defendant
McGuiness’ motion for summary judgment has not yet expired. (*See id.*)

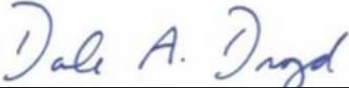
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Accordingly,

1. The findings and recommendations issued on February 5, 2020 (Doc. No. 288) are adopted in full;
2. The motion for summary judgment filed on behalf of defendants Wu and Jimenez (Doc. No. 284) is granted;
3. Judgment shall be entered in favor of defendants Wu and Jimenez and against plaintiff; and
4. This matter is referred back to the magistrate judge for further proceedings consistent with this order.

IT IS SO ORDERED.

Dated: February 26, 2020


UNITED STATES DISTRICT JUDGE