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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

ANTHONY CRAIG HUCKABEE,)	Case No.: 1:09-cv-00749-LJO-BAM (PC)
Plaintiff,)	
v.)	ORDER PARTIALLY ADOPTING FINDINGS
)	AND RECOMMENDATIONS REGARDING
MEDICAL STAFF at CSATF, et al.,)	DEFENDANTS' MOTION TO DISMISS
Defendants.)	(ECF Nos. 39, 75)
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Plaintiff Anthony Craig Huckabee (“Plaintiff”) is a state prisoner, currently proceeding pro se, in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff’s second amended complaint, filed on August 21, 2012, by Plaintiff’s then appointed voluntary counsel, for (1) deliberate indifference to a serious medical need in violation of the Eighth Amendment against Defendants Diaz, McGuiness, Wu, Bhatt, Nguyen, Garcia, Jimenez, Jeffreys, Chief Medical Officer at CSATF, and Chief Pharmacist at CSATF; (2) negligence against Defendants Diaz, Jeffreys, and Jimenez; (3) medical malpractice against Defendants McGuiness, Wu, Bhatt and Nguyen; (4) violation of the Unruh Civil Rights Act, California Civil Code § 51, against all defendants; and (5) negligent infliction of emotional distress against all defendants.

On August 21, 2013, the Magistrate Judge issued Findings and Recommendations that the motion to dismiss filed by Defendants Diaz, Wu, Bhatt and Nguyen be granted in part and denied in part. The findings and recommendations were served on the parties and contained notice that any

1 objections must be filed within thirty days after service. (ECF No. 75.) Following an extension of
2 time, Plaintiff filed his objections on October 17, 2013. (ECF No. 94.) Defendants Diaz, Wu, Bhatt
3 and Nguyen did not file a response.

4 In the Findings and Recommendations, the Magistrate Judge recommended partially granting
5 the motion to dismiss filed by Defendants Diaz, Wu, Bhatt and Nguyen. Specifically, the Magistrate
6 recommended as follows: (1) Defendants' motion to dismiss for failure to state a claim against
7 Defendant Warden Diaz be granted; (2) Defendants' motion to dismiss Plaintiff's state law causes of
8 action be granted based on a failure to allege compliance, or excusal from compliance, with the claim
9 presentation requirement of California's Government Claims Act; (3) Defendants' motion to dismiss
10 Plaintiff's claims against Dr. Nguyen as barred by the statute of limitations be granted with regard to
11 event occurring in 2000 and denied with regard to events occurring in 2006; (4) Defendants' motion to
12 dismiss Plaintiff's claims against Dr. Wu as barred by the statute of limitations be granted with regard
13 to events occurring prior to April 29, 2005, and denied with regard to events occurring after April 29,
14 2005; and (5) Defendants' motion to dismiss Plaintiff's claims against Dr. Bhatt as barred by the
15 statute of limitations be granted. (ECF No. 75, p. 16.)

16 Plaintiff first objects to the Findings and Recommendations because it omits the liability of two
17 unnamed defendants, which appear to be the Chief Medical Officer and Chief Pharmacist at California
18 Substance Abuse Treatment Facility ("CSATF"). Plaintiff's objection is overruled. The operative
19 complaint identifies Defendant Wu as the "Chief Medical Officer . . . charged with overseeing all
20 medical referrals and prescription renewals at CSATF." (ECF No. 33, p. 3.) The Findings and
21 Recommendations address Plaintiff's claims against Defendant Wu. To the extent Defendant Wu is
22 not considered to be both the Chief Medical Officer and Chief Pharmacist, the motion to dismiss did
23 not concern any claims against these unidentified individuals.

24 Plaintiff next objects to the Magistrate Judge's finding that April 29, 2009, was the operative
25 filing date of this action for purposes of the statute of limitations. In particular, Plaintiff contends that
26 the effective filing date should be April 23, 2009, the date he delivered his original complaint to prison
27 officials for processing. In other words, Plaintiff contends that the prison mailbox rule should be
28 applied to determine the effective filing date. Douglas v. Noelle, 567 F.3d 1103, 1106-07 (9th Cir.

1 2009). Plaintiff's objection is sustained. In the Findings and Recommendations, the Magistrate Judge
2 considered the "prison mailbox" rule to determine the effective filing date, but could not apply the rule
3 because Plaintiff's original complaint and accompanying proof of service were undated and his then-
4 appointed counsel did not provide any information regarding the effective filing date. (ECF No. 75, p.
5 11 n. 3.) Subsequent to that time, Plaintiff has filed a Notice of Errata and an application for relief
6 pursuant to Federal Rule of Civil Procedure 60 to correct the filing date. (ECF Nos. 90, 91.) Plaintiff
7 has declared under penalty of perjury that he delivered the complaint to the E-Yard, Building 3
8 custody staff on 3rd watch on Thursday, April 23, 2009. (ECF No. 90, p. 7.) Based on the
9 declaration, the Court therefore rejects that portion of the Magistrate Judge's findings regarding the
10 effective filing date of April 29, 2009, and adopts an effective filing date of April 23, 2009.

11 The adopted filing date of April 23, 2009, primarily alters the Magistrate Judge's
12 determination regarding application of the statute of limitations to Plaintiff's claims against Defendant
13 Dr. Wu. The Magistrate Judge found that Plaintiff's claims against Dr. Wu were barred with regard to
14 events occurring prior to April 29, 2005 (a four-year limitations period), but not to events occurring
15 after that date. Applying the adopted filing date of April 23, 2009, the Court finds that Plaintiff's
16 claims against Dr. Wu are barred with regard to events occurring prior to April 23, 2005, but not to
17 events occurring after that date.

18 As a final matter, Plaintiff objects to the Magistrate Judge's finding that the continuing
19 violations doctrine does not apply in this case. Plaintiff's objection is overruled. The Magistrate
20 Judge raised the applicability of the continuing violations doctrine and rejected its application to the
21 date of accrual of Plaintiff's claims in this action. (ECF No. 75, p. 13 n. 4.) Under the continuing
22 violations doctrine, a claim to redress such violations is deemed to have accrued on the date of the last
23 wrongful act. Sisseton-Wahpeton Sioux Tribe of Lake Travers Indian Reservation v. United States,
24 895 F.2d 588, 597 (9th Cir. 1990.) The Magistrate Judge appropriately rejected the applicability of the
25 doctrine in this case because Plaintiff alleged isolated instances involving requests for medication,
26 requests for referrals or requests for medication refills and treatment from different medical providers.
27 Plaintiff's allegations involve intervening acts by various medical providers and breaks in time
28 without complaint or requests for intervention.

1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a de
2 novo review of this case. Having carefully reviewed the entire file, including Plaintiff's objections,
3 the Court finds the Findings and Recommendations to be supported by the record and by proper
4 analysis as discussed.

5 Accordingly, IT IS HEREBY ORDERED that the Findings and Recommendations, issued on
6 August 21, 2013, are ADOPTED IN PART as follows:

- 7 1. Defendants' motion to dismiss, filed on December 30, 2012, is GRANTED IN PART and
8 DENIED IN PART;
- 9 2. Defendants' motion to dismiss for failure to state a claim against Defendant Warden Diaz
10 is GRANTED;
- 11 3. Defendants' motion to dismiss Plaintiff's state law causes of action for negligence, medical
12 malpractice, negligent infliction of emotional distress, and violation of the Unruh Civil
13 Rights Act is GRANTED;
- 14 4. Defendants' motion to dismiss Plaintiff's claims against Dr. Nguyen as barred by the
15 statute of limitations is GRANTED with regard to events occurring in 2000 and DENIED
16 with regard to events occurring in 2006.
- 17 5. Defendants' motion to dismiss Plaintiff's claims against Dr. Wu as barred by the statute of
18 limitations is GRANTED with regard to events occurring prior to April 23, 2005, and
19 DENIED with regard to events occurring after April 23, 2005; and
- 20 6. Defendants' motion to dismiss Plaintiff's claims against Dr. Bhatt as barred by the statute
21 of limitations is GRANTED.

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25 IT IS SO ORDERED.

26 Dated: December 10, 2013

/s/ Lawrence J. O'Neill
27 UNITED STATES DISTRICT JUDGE