

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

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ARTHUR LUNA,

Plaintiff,

v.

CALIFORNIA HEALTH CARE
SERVICES, et al.,

Defendants.

CASE No. 1:10-cv-02076-LJO-MJS (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS FOR DISMISSAL
OF CERTAIN CLAIMS AND DEFENDANTS

(ECF No. 20)

Case to Remain Open

_____ /

Plaintiff Arthur Luna is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. (ECF No. 1.) Plaintiff has declined Magistrate Judge jurisdiction. (ECF No. 7.) The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. 636(b)(1)(B) and Local Rule 302 of the United States District Court for the Eastern District of California.

1 On August 8, 2012, the Magistrate Judge assigned to this matter issued an order
2 finding the Second Amended Complaint to state a cognizable Eighth Amendment
3 medical indifference claim against Defendant Ugwueze but no other claim. (ECF No.
4 19.) On August 9, 2012, Findings and Recommendations for Dismissal of Certain Claims
5 and Defendants (ECF No. 20) were filed in which the Magistrate Judge recommended
6 dismissal without prejudice of Plaintiff's Second Amended Complaint, except for the
7 Eighth Amendment medical indifference claim against Defendant Ugwueze and
8 dismissal of Defendant Delano by the District Judge. Plaintiff was notified that his
9 objection, if any, was due within fourteen (14) days. On September 12, 2012, Plaintiff
10 filed Objections to the Findings and Recommendations. (ECF No. 23.)
11
12

13 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has
14 conducted a de novo review of this case. Having carefully reviewed the entire file, the
15 Court finds the Findings and Recommendations to be supported by the record and by
16 proper analysis. In his Objections, Plaintiff makes further argument in support of the
17 cognizable Eighth Amendment medical indifference claim against Defendant Ugwueze.
18 This argument is not an objection. Plaintiff also argues in favor of state law negligence.
19 However, his Second Amended Complaint does not allege satisfaction of state law
20 administrative remedies and so fails to claim state law negligence. This argument is not
21 sufficient as an objection. Plaintiff's Objections raise no material issue of law or fact
22 under the Findings and Recommendations.
23

24 //

25 //

26 //

27 //

1 Accordingly, IT IS HEREBY ORDERED that:

- 2 1. The Court adopts the Findings and Recommendations filed August 9, 2012
3 (ECF No. 20), in full,
4 2. Plaintiff's Second Amended Complaint (ECF No. 18), except for the Eighth
5 Amendment medical indifference claim against Defendant Ugwueze is
6 dismissed without prejudice and Defendant Delano is dismissed from this
7 action, and
8
9 3. This case shall remain open.

10 IT IS SO ORDERED.

11 Dated: September 18, 2012

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