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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BRADY ARMSTRONG,
Plaintiff,
vs.
A. HEDGPETH, et al.,
Defendants.

1:11-cv-00761-LJO-GSA-PC
FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS ACTION
PROCEED ONLY AGAINST DEFENDANT
NURSE RUMSEY ON PLAINTIFF'S
EIGHTH AMENDMENT MEDICAL
CLAIMS, AND THAT ALL OTHER CLAIMS
AND DEFENDANTS BE DISMISSED
OBJECTIONS, IF ANY, DUE IN 30 DAYS

Brady K. Armstrong ("Plaintiff") is a former state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on May 11, 2011. (Doc. 1.) The Court screened the Complaint pursuant to 28 U.S.C. § 1915A and issued an order on February 15, 2013, dismissing the Complaint for failure to state a claim, with leave to amend. (Doc. 23.) On November 20, 2013, Plaintiff filed the First Amended Complaint. (Doc. 43.)

1 The court screened the First Amended Complaint pursuant to 28 U.S.C. § 1915A and
2 found that it states only one cognizable claim under § 1983, against defendant Nurse Rumsey
3 for failure to provide adequate medical care in violation of the Eighth Amendment.¹ (Doc. 10.)
4 On June 4, 2014, Plaintiff was granted leave to either file a Second Amended Complaint or
5 notify the court that he is willing to proceed only on the claim found cognizable by the court.
6 (Id.) On July 2, 2014, Plaintiff filed a notice informing the court that he seeks to proceed on
7 the cognizable Eighth Amendment medical claim against defendant Rumsey. (Doc. 55.)

8 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 9 1. This action proceed only against defendant Nurse Rumsey, on Plaintiff's claims
10 for inadequate medical care under the Eighth Amendment;
- 11 2. All remaining claims and defendants be dismissed from this action;
- 12 3. Plaintiff's claims for retaliation, excessive force, and state tort claims be
13 dismissed from this action based on Plaintiff's failure to state a claim upon
14 which relief may be granted;
- 15 4. Defendants Dr. L. Dileo, Dr. Spaeth, MTA (Medical Technical Assistant)
16 Terronez, Nurse Gomez, Jane Doe #1, Jane Doe #2, and John Doe #1 be
17 dismissed from this action based on Plaintiff's failure to state any claims upon
18 which relief may be granted against them.

19 These Findings and Recommendations will be submitted to the United States District
20 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
21 thirty (30) days after being served with these Findings and Recommendations, Plaintiff may file
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23
24 ¹ In the screening order of June 4, 2014, the court made no determination about the viability of
25 Plaintiff's claim against defendant Dr. Dileo for failure to train medical staff, which suggests a state claim for
26 negligence. (Doc. 53 at 10 ¶IV.D.) Because Plaintiff has alleged a cognizable § 1983 medical claim, the federal
27 court could exercise supplemental jurisdiction over his state claims if properly pleaded and "**Error! Main
28 Document Only** within such original jurisdiction that they form part of the same case or controversy under Article
III." 28 U.S.C. § 1367(a). However, Plaintiff fails to state a cognizable negligence claim against Dr. Dileo. To
state a viable negligence claim, a plaintiff must allege facts showing duty, breach of duty, proximate cause, and
damages. Minch v. Department of California Highway Patrol, 140 Cal.App.4th 895, 900-01 (Cal. App. 2006).
Plaintiff fails to allege facts demonstrating that Dr. Dileo had a duty to train medical staff and breached that duty,
and that the breach was a proximate cause of his injuries. Therefore, Plaintiff fails to state a claim for negligent
failure to train against defendant Dr. Dileo.

1 written objections with the Court. The document should be captioned "Objections to
2 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
3 objections within the specified time may waive the right to appeal the District Court's order.
4 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

5
6 IT IS SO ORDERED.

7 Dated: July 9, 2014

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE