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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MICHAEL A. OMARA,

Plaintiff,

v.

STEVEN SMITH, et al.,

Defendants.

CASE NO. 1:11-CV-00812-LJO-DLB PC

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND GRANTING
IN PART AND DENYING IN PART
DEFENDANTS’ MOTION TO DISMISS
(DOC. 30)

ORDER REMANDING ACTION TO
TUOLUMNE COUNTY SUPERIOR COURT

Plaintiff Michael A. Omara (“Plaintiff”) is a former California state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding against Defendants Steven Smith and Jack St. Clair for deliberate indifference to a serious medical need in violation of the Eighth Amendment, and state law claims. This action was removed from Tuolumne County Superior Court on May 18, 2011. On June 28, 2011, Defendants filed a [motion to dismiss](#). Doc. 15. 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 December 20, 2011, the Magistrate Judge filed a [Findings and Recommendations](#) which was served on the parties and which contained notice to the parties that any objection to the Findings and Recommendations was to be filed within twenty-one days. Doc. 30. No party filed a timely Objection to the Findings and Recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1), this Court has conducted a *de novo* review of this case. Having carefully reviewed the entire file, the Court finds the Findings and Recommendations to be supported by the record and by proper analysis.

1 Plaintiff was provided the opportunity to amend his complaint to state a claim under 42
2 U.S.C. § 1983. On December 29, 2011, Plaintiff filed a notice that he did not intend to amend, and
3 wished to proceed only on the remaining state law claims once this action was remanded. Doc. 31.

4 Accordingly, IT IS HEREBY ORDERED that:

- 5 1. The Findings and Recommendations, filed December 20, 2011, is adopted in full;
- 6 2. Defendants' motion to dismiss, filed June 28, 2011, is GRANTED for Plaintiff's
7 failure to state a claim upon which relief may be granted under 42 U.S.C. § 1983;
- 8 2. Plaintiff's Eighth Amendment claim and supervisory liability claim are dismissed for
9 failure to state a claim;
- 10 3. Defendants' motion to dismiss is DENIED as to exhaustion of administrative
11 remedies pursuant to 42 U.S.C. § 1997e(a);
- 12 4. This action is REMANDED to the Tuolumne County Superior Court pursuant to 28
13 U.S.C. § 1447(c);
- 14 5. The Clerk of the Court is directed to mail a certified copy of this order of remand to
15 the clerk of the Tuolumne County Superior Court; and
- 16 6. The Clerk of the Court is directed to administratively close this action.

17 IT IS SO ORDERED.

18 **Dated: January 24, 2012**

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