

1 The magistrate judge concluded that any state law claims had been abandoned by plaintiff
2 because he did not restate any allegations with respect to such claims in his TAC. (Doc. No. 46 at
3 2, n.3.) In his objections plaintiff objects that he did not intend to abandon his state law claims by
4 failing to specifically identify them in his TAC. (Doc. No. 47 at 1-2.) Plaintiff’s objections are
5 unpersuasive on this point. Plaintiff was repeatedly warned that an amended complaint
6 supercedes any prior pleadings, and must be “complete in itself without reference to the prior or
7 superceded pleading.” (See Doc. Nos. 11, 29, 35, 43.) Despite these very specific admonitions,
8 plaintiff did not allege in his TAC that he had complied with the California Government Claims
9 Act (“CGCA”), set forth in California Government Code §§ 810 *et seq.* In his objections,
10 plaintiff argues that he did mention that he filed “a complaint against the County (tort claim)” in
11 his TAC and therefore contends he did allege compliance with the CGCA. (Doc. No. 47.)
12 However, merely filing a complaint or claim does not suffice to allege compliance with the
13 CGCA. Moreover, despite having attached exhibits to his earlier complaints reflecting his efforts
14 to comply with the CGCA, plaintiff attached no such exhibits to his TAC. (Compare Doc. Nos.
15 1 at 4-9, 38 at 15 at 15-18 with 44.) Plaintiff’s allegations in his TAC do not suggest that he filed
16 a claim to the appropriate Board and that the Board acted on the claim, or the time for doing so
17 expired as required by the CGCA.¹

18 Additionally, the court agrees with the assigned magistrate judge’s assessment that
19 plaintiff’s TAC fails to sufficiently allege facts to support claims of intentional emotional distress
20 and negligence.

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

24 For the reasons set forth above:

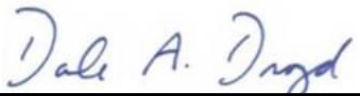
25 _____
26 ¹ The undersigned also notes that this matter has been pending before this court for nearly three
27 and one half years and plaintiff has been given a great deal of guidance by the court regarding
28 what he must include in his complaints in order to proceed. Plaintiff is now on his third amended
complaint, not counting supplemental filings. The court must proceed on the cognizable claims
properly alleged by plaintiff in that third amended complaint.

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
28

1. The December 16, 2016 findings and recommendations (Doc. No. 46) are adopted in full;
2. As previously found, plaintiff has stated cognizable claims only against defendants Nurses Jane Doe 1-3 and Deputies John Doe 1-6 and only for denial of adequate medical care, in violation of the Due Process Clause;
3. Plaintiff's claims against the County of Kern and the Kern County Medical Correctional Center are not cognizable and those claims and defendants are dismissed from this action with prejudice; and
4. This matter is referred back to the assigned magistrate judge for further proceedings.

IT IS SO ORDERED.

Dated: June 8, 2017



UNITED STATES DISTRICT JUDGE