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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DERRICK JESUS ODEN,
Plaintiff,
v.
STATE OF CALIFORNIA, et al.,
Defendants.

Case No. 1:14-cv-00873-LJO-BAM (PC)
ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, (Doc. No. 32), AND
DENYING THIRD MOTION FOR EXTENSION
OF TIME, (Doc. No. 31), AS MOOT
ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, (Doc. No. 26), AND
SEVERING AND DISMISSING CERTAIN
CLAIMS AND DEFENDANTS FOR THE
FAILURE TO STATE A COGNIZABLE CLAIM

Plaintiff Derrick Jesus Oden (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action under 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

I. Relevant Procedural Background

On May 23, 2017, the assigned Magistrate Judge issued findings and recommendations recommending that: (1) Plaintiff’s claims against defendants at California State Prison, Lancaster be severed and transferred to the Central District of California; (2) this action proceed on Plaintiff’s claim against Defendants J. Acebedo, S. Swaim, and R. Thomas for deliberate indifference in violation of the Eighth Amendment; and (3) all other claims and defendants be

1 dismissed from this action. (Doc. No. 26.) Those findings and recommendations were served on
2 Plaintiff and contained notice that any objections thereto were to be filed within fourteen (14)
3 days after service. (Id.)

4 Plaintiff requested, (Doc. Nos. 27, 29), and was granted, (Doc. Nos. 28, 30), two
5 extensions of time to file objections to those findings and recommendations.

6 On July 10, 2017, a letter from Plaintiff was docketed. (Doc. No. 31.) The assigned
7 Magistrate Judge construed the letter as a motion for a preliminary injunction against prison
8 officials regarding the return of Plaintiff's legal property, that Plaintiff asserted was needed to file
9 his objections. On July 12, 2017, the assigned Magistrate Judge issued findings and
10 recommendations recommending that Plaintiff's motion be denied. (Doc. No. 32.)

11 On July 14, 2017, Plaintiff filed objections to the May 23, 2017 findings and
12 recommendations, with a declaration in support. (Doc. No. 33.) Plaintiff declares that he received
13 his legal property and promptly filed the objections. Those objections were timely filed under the
14 extensions of time that were granted, as discussed above.

15 Thus, the Court adopts the findings and recommendations regarding Plaintiff's motion for
16 injunctive relief, and denies Plaintiff's request as moot. The Court turns to addressing the May
17 23, 2017 findings and recommendations.

18 **II. May 23, 2017 Findings and Recommendations**

19 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a
20 *de novo* review of this case and carefully reviewed the entire file, including Plaintiff's objections.
21 The Court finds that the May 23, 2017 findings and recommendations are supported by the record
22 and by proper analysis.

23 Plaintiff objects to the findings that he has failed to state a cognizable claim against the
24 Facility Physician at Kern Valley State Prison. Plaintiff objections that the physician can be held
25 liable for a violation of his constitutional rights, because he alleged that the physician is
26 responsible for making decisions based on Plaintiff's medical file, and the physician made an
27 incorrect decision. On the contrary, the Court agrees with the findings and recommendations that
28 Plaintiff alleges no more than a disagreement with a diagnosis or contentions of medical

1 malpractice, which cannot support a cognizable claim under § 1983. See Toguchi v. Chung, 391
2 F.3d 1051, 1060 (9th Cir. 2004) (“A showing of medical malpractice or negligence is insufficient
3 to establish a constitutional.”); Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989) (“A difference
4 of opinion does not amount to a deliberate indifference to Sanchez’ serious medical needs.”).

5 Plaintiff also objects to his claim against Defendant Lee being severed and transferred to
6 the Central District of California, because he believes employees like Lee work from home and
7 he is uncertain of where Lee is actually located. (Doc. No. 33, p. 3.) Plaintiff asserts that he is
8 concerned about lack of jurisdiction. The Court finds that Plaintiff’s claim against Defendant Lee
9 should be transferred and severed with the other claims Plaintiff raises regarding his transfer from
10 California State Prison, Lancaster, and that any jurisdictional concerns, should they arise, are
11 most properly evaluated by the transferee court.

12 **III. Conclusion and Order**

13 Based on the foregoing, IT IS HEREBY ORDERED that:

- 14 1. The findings and recommendations, issued on July 12, 2017 (Doc. No. 32), are
15 adopted in full;
- 16 2. Plaintiff’s motion seeking injunctive relief, filed on July 10, 2017 (Doc. No. 31), is
17 denied as moot;
- 18 3. The findings and recommendations, issued on May 23, 2017 (Doc. No. 26), are
19 adopted in full;
- 20 4. Plaintiff’s claims against California State Prison, Lancaster defendants—Warden
21 Howls; Brian Lee, CSR; C. Wofford, Chief Deputy Warden, Lancaster; R.
22 Knowles, Facility Captain, Lancaster; R. Butler, Correctional Counselor,
23 Lancaster; C. Nungaray, Counselor, Lancaster; and L. Parker, CSPR, Lancaster—
24 are severed from this action and transferred to the Central District of California;
- 25 5. This action proceeds on Plaintiff’s Eighth Amendment claim for deliberate
26 indifference against Defendants J. Acebedo, S. Swaim and R. Thomas;
- 27 6. All other claims and defendants are dismissed from this action based on Plaintiff’s
28 failure to state claims upon which relief may be granted; and

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7. This matter is referred back to the assigned Magistrate Judge for proceedings consistent with this order.

IT IS SO ORDERED.

Dated: July 27, 2017

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