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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RODERICK BRYON RUSSELL, JR.,  
Plaintiff,  
v.  
DR. K. TOOR, et al.,  
Defendants.

No. 1:15-cv-00255-DAD-SAB

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS AND DISMISSING  
CERTAIN CLAIMS AND DEFENDANTS

(Doc. No. 23)

Plaintiff Roderick Byron Russell, Jr., is a former state prisoner proceeding pro se and *in forma pauperis* pursuant to 42 U.S.C. § 1983. Defendant Dr. K. Toor has appeared in this action, while defendants N.P. Woodward, Dr. Shwe, and Dr. Malakkla have not.

Plaintiff consented to magistrate judge jurisdiction on March 2, 2015. (Doc. No. 4.) On November 7, 2016, the assigned magistrate judge screened plaintiff's third amended complaint and found that plaintiff stated a cognizable claim against defendant Toor for deliberate indifference in violation of the Eighth Amendment. (Doc. No. 16.) The magistrate judge dismissed all claims against defendants N.P. Woodward, Dr. Shwe, and Dr. Malakkla, with prejudice, for the failure to state a claim. (*Id.*)

However, on November 30, 2017, the magistrate judge reinstated plaintiff's previously dismissed claims, recognizing that a recent Ninth Circuit opinion, *Williams v. King*, 875 F.3d 500 (9th Cir. 2017), had held that a magistrate judge does not have jurisdiction to dismiss claims

1 when screening prisoner complaints where plaintiff has consented, but the unserved defendants  
2 have not consented. (Doc. No. 23.) Concurrently, the magistrate judge issued findings and  
3 recommendations recommending that the reinstated claims be dismissed. (*Id.*) Plaintiff was  
4 given fourteen days to file any objections to those findings and recommendations. Plaintiff did  
5 not file any objections, and the time in which to do so has now passed.

6 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, the  
7 undersigned has conducted a de novo review of plaintiff's case. The undersigned concludes the  
8 findings and recommendations are supported by the record and by proper analysis.

9 Given the foregoing:

- 10 1. The findings and recommendations issued on November 30, 2017 (Doc. No. 23) are  
11 adopted in full;
- 12 2. Plaintiff's claims against defendants N.P. Woodward, Dr. Shwe, and Dr. Malakkla are  
13 dismissed for the failure to state a claim upon which relief may be granted; and
- 14 3. This action proceeds solely on plaintiff's claim against defendant Toor for deliberate  
15 indifference in violation of the Eighth Amendment as alleged in plaintiff's third amended  
16 complaint, those claims having been found to be cognizable in the magistrate judge's prior  
17 screening order (Doc. No. 16).

18 IT IS SO ORDERED.

19 Dated: January 7, 2018

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22 UNITED STATES DISTRICT JUDGE  
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