

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

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

JOSH THOMAS,

Plaintiff,

v.
RENE WILKINSON, et al.,

Defendants.

1:15-cv-527-LJO-GSA (PC)

**ORDER ADDRESSING OBJECTION
TO ORDER DENYING PLAINTIFF’S
MOTION TO EXTEND TIME (ECF NO.
55) AND OBJECTIONS TO FINDINGS
AND RECOMMENDATIONS (ECF No.
57); AND CONFIRMING ADOPTION
OF FINDINGS AND
RECOMMENDATIONS TO GRANT
DEFENDANT TEHRANI’S MOTION
TO DISMISS**

Josh Thomas (“Plaintiff”) is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. On February 10, 2017, the assigned magistrate judge issued Findings and Recommendations (“F&Rs”) recommending that Defendant Jasmine A. Tehrani’s motion to dismiss be granted. ECF No. 49. Specifically, the F&Rs recommended dismissal of Plaintiff’s Eighth Amendment claims against defendant Tehrani as barred by the statute of limitations and dismissal of Plaintiff’s state law claims against defendant Tehrani for failure to exhaust remedies required by California’s Government Claims Act. *Id.* at 19. The parties were granted thirty days in which to file objections to the F&Rs. *Id.*

On March 3, 2017, Plaintiff moved for a 45 day extension of time to file objections to the F&Rs, asserting that he was “scheduled [for] out-side medical treatment/surgery for stomach bleeding and will be [on] call at any time for that treatment.” ECF No. 51. He further explained that he has “other[] cases

1 pending in Sacramento District Court.” *Id.* On March 9, 2017, the magistrate judge denied Plaintiff’s
2 motion to extend time to file objections to the F&Rs, reasoning that Plaintiff had provided insufficient
3 detail regarding his physical or mental health conditions and noting, among other things, that “Plaintiff
4 has filed and litigated more than twenty cases pro se in this court since 1990 and has responded timely to
5 other orders in this case.” ECF No. 53. On March 22, 2017, without any objections to the F&Rs on file,
6 the Court adopted the F&Rs in full and granted Defendant Tehrani’s motion to dismiss. ECF No. 54.

7 On March 23, 2017, the Court received a document entitled “Objection to Order Denying
8 Plaintiff’s Motion to Extend Time to File Objections,” which asserted that he required an extension
9 because he was preparing an opposition to another Defendant’s motion to dismiss in this case “while
10 suffering stomach bleeding, vomiting blood, nausea, irritation, anxiety, d[e]pression, severe
11 posttraumatic stress, apraxia, delirium – cognitive and dementia, pain and suffering.” ECF No. 55. The
12 Court construes this as a request to consider late-filed objections, which Plaintiff then filed on April 3,
13 2017. *See* ECF No. 57.

14 First, the Court does not disagree with the magistrate judge’s denial of Plaintiff’s request for an
15 extension. His complaints of physical and mental health issues are broad and non-specific, and,
16 critically, fail to explain with any particularity how they interfere with his ability to meet this particular
17 deadline, while allowing him to proceed with work on other aspects of this litigation. Nonetheless, in an
18 abundance of caution, the Court has reviewed and considered the late-filed objections. In light of the
19 entire record, including those objections, and in accordance with the provisions of 28 U.S.C. § 636
20 (b)(1)(B) and Local Rule 304, this court has conducted a de novo review of this case. Having carefully
21 reviewed the entire file, the court confirms its earlier finding that the F&Rs are supported by the record
22 and proper analysis.

23 Plaintiff objects that his claims against Defendant Tehrani are not barred by the statute of
24 limitations because of the continuing violation doctrine. ECF No. 57 at 5-10. In sum, Plaintiff alleges
25 that a typographical error in his psychological evaluation report led to repeated denials of his parole.

1 Defendant Tehrani supervised another psychologist, Dr. Wilkinson, who allegedly caused the error to be
2 included in the psychological evaluation in 2008. Plaintiff alleges that his injuries continue to accrue
3 each time the allegedly erroneous report prepared by Dr. Wilkinson is accessed by the Parole Board or
4 others. However, continuing impact from a past violation is not actionable against Defendant Tehrani.
5 Subsequent access by others to the report does not constitute an act on the part of Defendant Tehrani,
6 thus Plaintiff cannot demonstrate a continuing violation by Defendant Tehrani.

7 Plaintiff also objects that equitable tolling should be applied to his claims. The Prison Litigation
8 Reform Act (“PLRA”) requires exhaustion of remedies within the prison grievance system before a
9 section 1983 action related to prison conditions may be brought. 42 U.S.C. § 1997e(a). The statute of
10 limitations may be equitably tolled while exhaustion of administrative remedies occurs. *Donoghue v.*
11 *County of Orange*, 848 F.2d 926, 930-31 (9th Cir. 1988); *Addison v. State of California*, 21 Cal. 3d 313,
12 318 (1978). However, the only document attached by Plaintiff to his Objections is an “Inmate/Parolee
13 Appeal form” that states:

14 Appellant has and continue to be denied parole on multiple occasion, with
15 one of the Board's recommendations and requests being that this writer
16 received therapy while incarcerated. Appellant has approached CDC
17 mental health staff several time to request therapy so I might satisfy this
18 condition. Each request has been meet with refusal, with psychological
19 evaluations concluding that appellant did not suffer from a mental disease
20 or defect that would be remediable through psychotherapy.

18 ECF No. 57 at 37. The response to Plaintiff’s appeal form, dated June 4, 2010, states “Denied. This is a
19 BPH issue.” *Id.* Other documents presented by Plaintiff appear to follow up on this appeal and include
20 requests for “therapy.” *Id.* at 45. None of the documents provided concern the issue raised in his
21 Complaint in this case: the alleged inclusion of erroneous information in his psychological evaluation
22 report. Therefore, Plaintiff’s Inmate/Parolee Appeal and related documents cannot serve to toll the
23 statute of limitations as to the claims in his Complaint.

24 Finally, Plaintiff offers absolutely no basis for the Court to question the F&R’s conclusions
25 regarding his failure to exhaust remedies required by California’s Government Claims Act.

