

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

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CLIFTON HUTCHINS, JR.,
Plaintiff,
v.
BILL LOCKYER, et al.,
Defendants.

No. 1:15-cv-01537-DAD-MJS

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
CERTAIN CLAIMS

(Doc. No. 36)

Plaintiff is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983. (Doc. No. 1.) Defendant Johal has appeared in this action, while defendants Klang, Yousseff, Nurse Does 1–2, and Does 3–6 have not.

On December 19, 2016, the assigned magistrate judge screened plaintiff’s complaint and dismissed all claims against defendants Klang, Yousseff, Nurse Does 1–2, and Does 3–6 in plaintiff’s second amended complaint with prejudice. (Doc. No 26.) Plaintiff voluntarily declined to pursue his claims against defendants Lockyer, Lewis, Ramos, Sheheta, Patel, Katavich, and Does 7–10 in the second amended complaint after his original complaint and first amended complaint were dismissed with leave to amend. (Doc. Nos. 14, 20.)

The case proceeded on two of plaintiff’s claims against defendant Johal. (Doc. Nos. 21, 26.) Defendant Johal filed a motion to dismiss on March 10, 2017. (Doc. No. 30.) On August 22, 2017, the magistrate judge issued findings and recommendations recommending that

1 defendant's motion to dismiss be denied. (Doc. No. 34.) Those findings and recommendations
2 were adopted by the undersigned. (Doc. No. 37.)

3 On November 22, 2017, the magistrate judge reinstated plaintiff's previously dismissed
4 claims, recognizing that a recent Ninth Circuit opinion, *Williams v. King*, 875 F.3d 500 (9th Cir.
5 2017), had held that a magistrate judge does not have jurisdiction to dismiss claims with prejudice
6 in screening prisoner complaints even if the plaintiff has consented to magistrate judge
7 jurisdiction, as plaintiff had here. (Doc. No. 36.) Concurrently, the magistrate judge issued
8 findings and recommendations recommending that the undersigned dismiss those reinstated
9 claims. (*Id.*) Plaintiff was given fourteen days to file his objections to those findings and
10 recommendations. Plaintiff did not file any objections, and the time in which to do so has now
11 passed.

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

15 Accordingly,

- 16 1. The findings and recommendations issued on November 22, 2017 (Doc. No. 36) are
17 adopted in full;
- 18 2. Plaintiff's claims against defendants Klang, Yousseff, Nurse Does 1-2, and Does 3-6 are
19 dismissed;
- 20 3. Plaintiff's first claim against defendant Johal for medical indifference is dismissed; and
- 21 4. This action proceeds solely on plaintiff's second medical indifference claim and
22 retaliation claim against defendant Johal as alleged in the second amended complaint,
23 those claims having been found to be cognizable in the magistrate judge's prior screening
24 orders (Doc. Nos. 20, 26).

25 IT IS SO ORDERED.

26 Dated: December 8, 2017

27 
28 UNITED STATES DISTRICT JUDGE