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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MICHAEL NEIL JACOBSEN,
Plaintiff,
v.
OFFICER CURRAN, et al.,
Defendants.

Case No. 1:16-cv-01050-LJO-MJS (PC)

**ORDER ADOPTING FINDINGS AND
RECOMMENDATION TO DISMISS NON-
COGNIZABLE CLAIMS**

(ECF No. 43)

**ORDER DEEMING FIRST AMENDED
COMPLAINT (ECF No. 11) AMENDED
TO SUBSTITUTE TIMOTHY GANIRON
AS DEFENDANT IN PLACE OF DOES 1
AND 5; MINERVA MANGULABNAN AS
DEFENDANT IN PLACE OF DOE 6;
GENEVIEVE GARCIA AS DEFENDANT
IN PLACE OF DOE 7; AND DR.
BURNETT AS DEFENDANT IN PLACE
OF DOES 9 AND 11**

(ECF No. 11)

**CLERK TO AMEND DOCKET TO
REFLECT SUBSTITUTIONS**

Plaintiff is a former county inmate proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302 of the United States District Court for the Eastern District of California.

On December 12, 2016, the Magistrate Judge screened Plaintiff's first amended

1 complaint and concluded that it states cognizable Fourteenth Amendment claims for
2 inadequate medical care against Defendants Curran, Gonzalez, and Does 1-11, as well
3 as a cognizable First Amendment retaliation claim against Nurse Doe 7. (ECF No. 12.)
4 Non-cognizable medical care claims against named and unnamed defendants were
5 dismissed with prejudice. Improperly joined claims were dismissed without prejudice to
6 Plaintiff bringing them in a separate case. (Id.)

7 On December 04, 2017, the Magistrate Judge re-screened Plaintiff's complaint,
8 recognizing that a recent Ninth Circuit opinion, Williams v. King, 875 F.3d 500 (9th Cir.
9 2017), held that a magistrate judge does not have jurisdiction to dismiss claims with
10 prejudice in screening prisoner complaints absent the consent of all parties, even if the
11 plaintiff has consented to magistrate judge jurisdiction, as plaintiff had here. (ECF No.
12 43.) Concurrently, the Magistrate Judge issued findings and recommendations
13 recommending that the undersigned dismiss the non-cognizable claims. (Id.) The
14 parties were given fourteen days to file objections to those findings and
15 recommendations. Plaintiff filed objections. (ECF No. 46.) Defendants filed no response.

16 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has
17 conducted a *de novo* review of this case. Plaintiff's objections do not raise an issue of
18 fact or law under the findings and recommendations. Plaintiff objects that he would like
19 an opportunity to properly join claims that the Magistrate Judge concluded were
20 improperly joined. The Court finds no basis for joining these claims in this action. They
21 were recommended for dismissal without prejudice to Plaintiff bringing them in a
22 separate action. To the extent Plaintiff states he is uncertain which claims are being so
23 dismissed, he is referred back to the Magistrate Judge's screening order.

24 With regard to the allegations that the Magistrate Judge concluded failed to state
25 a claim, Plaintiff again states he is uncertain which claims are being dismissed and why.
26 To the extent Plaintiff objects that the dismissal of claims is predicated upon him having
27 pursued Doe defendants, he requests the opportunity to identify these individuals
28 through discovery. However, the Magistrate Judge did not recommend dismissal of any

1 defendants on the basis of their being unnamed; he recommended dismissal on the
2 ground that Plaintiff failed to link certain allegations to any named or unnamed
3 defendant, as required under applicable pleadings rules. Plaintiff was advised of this
4 requirement on more than one occasion and was afforded leave to amend and did not
5 cure these defects.

6 Plaintiff also requests the Court provide him with a copy of his complaint. Plaintiff
7 has made numerous requests for copies in association with this action. (See ECF Nos.
8 10, 39, 49.) Plaintiff is reminded that “[t]he Court will not make copies of filed documents
9 . . . for free even for parties proceeding in forma pauperis.” (ECF No. 3) Plaintiff was
10 informed after his last request for copies that no further such requests would be
11 accommodated. (See ECF No. 49.) Accordingly, Plaintiff’s request will not be granted.

12 Lastly, the Court notes that, subsequent to his objections, Plaintiff lodged an
13 amended complaint. (ECF No. 66.). The deadline to amend pleadings has passed (ECF
14 No. 28.) and Plaintiff does not explain his inability to amend sooner. More significantly,
15 Plaintiff’s amended complaint states no new cognizable claim. Also, the proposed
16 amended complaint also does not include claims previously deemed cognizable.
17 Permitting Plaintiff to amend would therefore have the effect of dismissing cognizable
18 claims from this action, an effect the Court presumes Plaintiff did not intend.
19 Accordingly, leave to file this proposed amended complaint will be denied as futile.
20 Nordyke v. King, 644 F.3d 776, 788 n.12 (9th Cir. 2011)(noting that amendment should
21 be considered futile if the amended pleading would not withstand a motion to dismiss
22 under Federal Rule of Civil Procedure 12(b)(6)).

23 However, the proposed amended complaint does identify several defendants by
24 name who previously were identified as Does. Rather than requiring Plaintiff to amend
25 the first amended complaint to include these names, the Court will deem the first
26 amended complaint amended to substitute as stated in caption.

27 In sum, having carefully reviewed the entire file, the Court finds the findings and
28 recommendations to be supported by the record and by proper analysis.

1 Based on the foregoing, it is HEREBY ORDERED that:

- 2 1. The Court adopts in full the findings and recommendations filed December
3 04, 2017 (ECF No. 43);
- 4 2. The action shall continue to proceed on Plaintiff's cognizable Fourteenth
5 Amendment claims for inadequate medical care against Defendants
6 Curran, Dulces, and Does 1-11, as well as a cognizable First Amendment
7 retaliation claim against Nurse Doe 7;
- 8 3. The improperly joined claims are dismissed without prejudice to Plaintiff
9 bringing them in a separate action¹;
- 10 4. The remaining claims are dismissed without leave to amend for failure to
11 state a claim;
- 12 5. To the extent Plaintiff's submissions (ECF Nos. 46, 66) may be construed
13 as seeking leave to amend, such leave is denied; and
- 14 6. Plaintiff's first amended complaint (ECF No. 11) is deemed amended to
15 substitute Timothy Ganiron in place of Does 1 and 5; Minerva
16 Mangulabnan in place of Doe 6; Genevieve Garcia in place of Doe 7; and
17 Dr. Burnett in place of Does 9 and 11; and
- 18 7. The Clerk's Office is directed to amend the court records to reflect these
19 substitutions; and
- 20 8. The matter is referred back to the Magistrate Judge for further
21 proceedings, including the initiation of service of process on the newly
22 named defendants.

23 IT IS SO ORDERED.

24 Dated: March 19, 2018

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

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28 ¹ The findings and recommendations stated that these claims should be dismissed without prejudice, but then recommended that they be dismissed with prejudice. The later recommendation appears to be in error. The claims will be dismissed without prejudice to their being brought in a separate action.

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