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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-AWI-MJS (PC)
**ORDER MODIFYING ORDER ADOPTING
FINDINGS AND RECOMMENDATION TO
DISMISS NON-COGNIZABLE CLAIMS**
(ECF No. 68)
FOURTEEN (14) DAY DEADLINE

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 action proceeds on Plaintiff's first amended complaint against Defendants Curran and Gonzalez for inadequate medical care in violation of the Eighth Amendment of the United States Constitution. (ECF No. 11.)

I. Relevant Procedural Background

On March 19, 2018, the Court adopted the Magistrate Judge's recommendation (ECF No. 43) that certain non-cognizable claims be dismissed. (ECF No. 68.)

Also pending before the Court are Defendants' motions for summary judgment. (ECF Nos. 35, 38.) The Court has now reviewed Plaintiff's opposition to those motions. (ECF No. 58.) Upon review, given the requirement to treat pro se parties' pleadings liberally, the Court believes that Plaintiff's opposition should be treated as a timely

1 objection to the above-mentioned findings and recommendation. As such, the Court will
2 review Plaintiff's objections de novo to determine if they raise an issue of law or fact.

3 **II. Objections Raise Additional Cognizable Claim**

4 Upon review, Plaintiff's objections indicate that Plaintiff has alleged an additional
5 cognizable claim against Defendant Gonzalez. Plaintiff's claim against Defendant
6 Gonzalez is based on Plaintiff's allegation that Defendant Gonzalez removed Plaintiff's
7 PIC line and discontinued Plaintiff's antibiotics, contrary to the orders of Plaintiff's
8 surgeon. (ECF No. 12 at 9-10.) In the operative complaint, Plaintiff alleges his PIC line
9 was removed twice. One removal was attributed to Defendant Gonzalez, but the second
10 removal was not attributed to any Defendant and was dismissed on that basis. (*Id.* at
11 10.) However, Plaintiff now indicates that the second removal was also conducted by
12 Defendant Gonzalez. (ECF No. 58 at 2.)

13 Accordingly, Plaintiff has alleged a cognizable claim of Eighth Amendment
14 deliberate indifference against Defendant Gonzalez based on the allegation that
15 Defendant Gonzalez twice removed Plaintiff's PIC line contrary to the orders of his
16 surgeon.

17 **III. Conclusion and Order**

18 Based on the foregoing, it is HEREBY ORDERED THAT the order adopting
19 findings and recommendation to dismiss non-cognizable claims (ECF No. 68) is modified
20 to hold that Plaintiff has alleged a cognizable claim against Defendant Gonzalez based
21 on Plaintiff's allegation that Defendant Gonzalez removed Plaintiff's PIC line on two
22 occasions.

23 In light of this determination, and to the extent necessary, Defendant Gonzalez
24 may file an amended answer within fourteen days of the date of this order.
25 IT IS SO ORDERED.

26 Dated: March 29, 2018

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