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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

COLIN M. RANDOLPH,
Plaintiff,
v.
R. LOZOVOY, et al.,
Defendants.

No. 1:16-cv-01528-DAD-EPG (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, GRANTING IN
PART AND DENYING IN PART
DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT

(Doc. Nos. 49, 56)

Plaintiff Colin M. Randolph is a state prisoner 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.

In his first amended complaint, plaintiff alleges that defendants Chen, Grewal, and Lozovoy engaged in deliberate indifference to his serious medical needs in violation of the Eight Amendment against. (Doc. No. 11.) On January 15, 2019, defendants filed a motion for summary judgment, arguing that “(1) Plaintiff failed to exhaust administrative remedies with respect to Defendants Grewal and Chen, because the only appeal he filed concerning the issues raised in the complaint was filed before he saw them; (2) each Defendant provided proper medical care to Plaintiff at the time of treating him; and (3) Defendants are entitled to qualified

1 immunity because they acted reasonably in providing medical care to Plaintiff.” (Doc. No. 49-1
2 at 6.)

3 Plaintiff filed his opposition to defendants’ motion for summary judgment on February 4,
4 2019. (Doc. No. 51.) Although plaintiff conceded therein that he failed to exhaust administrative
5 remedies as to defendants Chen and Grewal, he argued that the court should not grant summary
6 judgment in favor of defendant Lozovoy. (*Id.* at 1–2.) Defendants filed their reply on February
7 15, 2019. (Doc. No. 54.)

8 On August 29, 2019, the assigned magistrate judge issued findings and recommendations,
9 recommending that defendants’ motion for summary judgment be granted with respect to his
10 claims against defendants Chen and Grewal. (Doc. No. 56 at 14.) However, the magistrate judge
11 recommended summary judgment be denied as to defendant Lozovoy, concluding that there was
12 “a genuine dispute of material fact regarding whether defendant Lozovoy was deliberately
13 indifferent to Plaintiff’s serious medical needs, and that defendant Lozovoy is not entitled to
14 qualified immunity.” (*Id.* at 13.) The findings and recommendations were served on plaintiff and
15 contained notice that any objections thereto were to be filed within fourteen (14) days after
16 service. (*Id.* at 14.) No objections have been filed and the time in which to do so has now passed.

17 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Rule 304, this
18 court has conducted a *de novo* review of this case. Having carefully reviewed the entire file, the
19 court finds the findings and recommendations to be supported by the record and proper analysis.

20 Accordingly:

- 21 1. The findings and recommendations issued on August 29, 2019, (Doc. No. 56), are
22 adopted in full;
- 23 2. Defendants’ motion for summary judgment, (Doc. No. 49), is granted in part and
24 denied in part;
 - 25 a. Summary judgment is granted in favor of defendants Chen and Grewal due to
26 plaintiff’s failure to exhaust his administrative remedies prior to filing suit as
27 required with respect to his claims against those defendants;
 - 28 b. Summary judgment is denied as to defendant Lozovoy; and

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3. The matter is referred back to the magistrate judge for further proceedings consistent with this order.

IT IS SO ORDERED.

Dated: September 23, 2019

Dale A. Floyd
UNITED STATES DISTRICT JUDGE