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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

AUBREY LEE BROTHERS, II,
Plaintiff,
v.
CHITA BUENAFE, *et al.*
Defendants.

No. 1:17-cv-00607-NONE-HBK
ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, GRANTING
DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT AND DIRECTING THAT
JUDGMENT BE ENTERED IN FAVOR OF
DEFENDANTS AND THAT THIS CASE
BE CLOSED
(Doc. Nos. 63, 92)

Plaintiff Aubrey Lee Brothers, II, is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action 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.

On May 26, 2021, the assigned magistrate judge issued findings and recommendations, recommending that defendants' motion for summary judgment be granted. (Doc. No. 63.) On June 28, 2021, plaintiff filed objections to those findings and recommendations. (Doc. No. 95).

In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, this court has conducted a *de novo* review of this case.

Plaintiff objects, arguing that the magistrate judge improperly stated plaintiff did not attach any exhibits to his opposition. (Doc. No. 95 at 1–2.) The magistrate judge correctly noted

1 that plaintiff's opposition did not include the exhibits he referred to. (Doc. No. 92 at 2 (citing
2 Doc. No. 76).) Plaintiff has attached exhibits to his objections (Doc. No. 95), and the court has
3 reviewed those exhibits in considering his objections to the pending findings and
4 recommendations.

5 The magistrate judge recommended granting summary judgment in favor of defendants, in
6 part, because defendants were not aware of plaintiff's orbital fracture until he filed this lawsuit.
7 Plaintiff argues that defendants were aware of his pain and fracture due to his repeated filing of
8 inmate grievances. (Doc. No. 95 at 2, 8-10, Exs. B, C (healthcare-services-request forms and
9 medical and dental records).) However, none of these records establish that either defendant had
10 anything to do with plaintiff's dental care after March 18, 2014. Many records and requests are
11 from or directed to medical, rather than dental, services. The court was unable to locate any
12 evidence that either defendant named in this action reviewed or signed off on the documents in
13 question dated after March 18, 2014. Therefore, this evidence before the court on summary
14 judgment does not establish that defendants were aware of plaintiff's condition at any relevant
15 time.

16 Next, plaintiff objects to the pending findings and recommendations on the ground that
17 the medical and dental professionals kept blaming the other and neither addressed his pain for
18 months. (Doc. No. 95 at 3-4.) However, defendants have come forward with evidence on
19 summary judgment that plaintiff's pain resulted from a medical, rather than a dental, problem.
20 (See Doc. No. 63-6 ¶ 3 (declaration of E. Clark, MD, that plaintiff's injury most likely caused by
21 trauma near his eye and plaintiff's medical records show scarring indicative of trauma near the
22 eye).) Plaintiff argues that these opinions are not facts, but he fails to point to any flaw with the
23 magistrate judge's reasoning based upon that undisputed evidence. (See Doc. No. 95 at 3-4, 10.)
24 Had plaintiff named a proper defendant, it is plausible that his case could continue against that
25 defendant for failing to provide him with timely medical treatment, as opposed to dental care.
26 Plaintiff's mere argument does not establish the existence of a material issue of disputed fact as to
27 the named defendants' liability.

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1 Plaintiff also argues that defendants' answers to interrogatories state that they cannot
2 recall whether they refused him pain medication the day of or the day after his dental procedure.
3 (Doc. No. 95 at 6–7.) However, plaintiff himself testified at his deposition that defendants had
4 told him to make a medical request for treatment of his pain. (Doc. No. 63-7 at 38–39.) Such a
5 response itself does not establish that the named defendants were deliberately indifferent to
6 plaintiff's condition, especially given how soon the request came after the dental procedure was
7 performed.

8 Accordingly,

- 9 1. The findings and recommendations issued on May 26, 2021 (Doc. No. 92) are
10 adopted in full;
- 11 2. Defendants' motion for summary judgment (Doc. No. 63) is granted;
- 12 3. The Clerk of the Court is directed to enter judgment in favor of defendants C.
13 Buenafe and N. Ramirez; and
- 14 4. The Clerk of the Court is directed to assign a district judge for purposes of closing
15 this case and to close this case.

16 IT IS SO ORDERED.

17 Dated: September 30, 2021

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20 UNITED STATES DISTRICT JUDGE
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