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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SHAJIA AYOBI,
Plaintiff,
v.
BARBARA SHOWALTER,
Defendant.

No. 1:17-cv-00693-DAD-SAB (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
DEFENDANT ADAMS FOR FAILURE TO
STATE A COGNIZABLE CLAIM FOR
RELIEF

(Doc. No. 7, 8, 16)

Plaintiff Shajia Ayobi is appearing pro se and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

Plaintiff consented to United States Magistrate Judge jurisdiction under 28 U.S.C. § 636(c) on June 1, 2017. (Doc. No. 5.) To date, defendant has not consented or declined to United States magistrate judge jurisdiction.

On August 14, 2017, the assigned magistrate judge found that plaintiff's first amended complaint stated a cognizable claim against defendant Showalter for deliberate indifference to a serious medical need in violation of the Eighth Amendment, and dismissed defendant Adams for failure to state a cognizable claim for relief. (Doc. No. 8.) The magistrate judge indicated that

1 jurisdiction existed under 28 U.S.C. § 636(c) based on the fact that plaintiff had consented to
2 magistrate judge jurisdiction and no other parties had yet appeared in the action.

3 On November 6, 2017, defendant filed an answer to the complaint. (Doc. No. 12.) On
4 November 8, 2017, the court issued discovery and scheduling order. (Doc. No. 13.)

5 On November 9, 2017, the Ninth Circuit Court of Appeals held that 28 U.S.C. § 636(c)(1)
6 requires the consent of all named plaintiffs and defendants, even those not served with process,
7 before jurisdiction may vest in a magistrate judge to dispose of a civil case. *Williams v. King*, 875
8 F.3d 500, 504 (9th Cir. 2017). Accordingly, the magistrate judge lacked jurisdiction to dismiss
9 defendant Adams by way of the August 14, 2017 order. Therefore, on December 4, 2017, the
10 magistrate judge issued findings and recommendations recommending that this action proceed
11 against defendant Showalter for deliberate indifference to a serious medical need in violation of
12 the Eighth Amendment, and defendant Adams be dismissed for failure to state a cognizable claim
13 for relief. The findings and recommendations were served on the parties and contained notice
14 that objections were to be filed within twenty-one days. No objections were filed and the time
15 period to do so has expired. In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and
16 Local Rule 304, the undersigned has conducted a de novo review of plaintiff's case. The
17 undersigned concludes the findings and recommendations are supported by the record and by
18 proper analysis.

19 Accordingly,

- 20 1. The December 4, 2017 findings and recommendations are adopted in full;
- 21 2. This action shall continue to proceed against Defendants Barbara Showalter for deliberate
22 indifference; and
- 23 3. Defendant Adams is dismissed from the action for failure to state a cognizable claim for
24 relief.

25 IT IS SO ORDERED.

26 Dated: January 5, 2018

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28 UNITED STATES DISTRICT JUDGE