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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PAUL JORGENSON,
Plaintiff,
v.
UNITED STATES OF AMERICA, et al.,
Defendants.

Case No. 1:17-cv-00817-LJO-EPG (PC)
ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS
(ECF Nos. 29, 34, & 91)

Paul Jorgenson (“Plaintiff”) is a federal prisoner proceeding *pro se* and *in forma pauperis* in this action. The matter was referred to a United States magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. This case now proceeds on Plaintiff’s Second Amended Complaint (“SAC”), which was filed on July 12, 2018. (ECF No. 19). This case is proceeding “on Plaintiff’s FTCA claim against the United States, his Eighth Amendment Bivens claim against the four unknown correctional officers, and his state tort claims for medical negligence and battery against Defendants Haak, Randhawa, and Emanuel Medical Center.” (ECF No. 21, p. 2).

On December 17, 2018, defendant Emanuel Medical Center (“EMC”) and defendant Jaspal Randhawa (“Randhawa”) filed a partial motion to dismiss and a motion to strike Plaintiff’s claim for punitive damages. (ECF Nos. 29, 30, 31, 34, & 35). As a motion to strike a claim for punitive damages on the ground that punitive damages are precluded as a matter of

1 law is improper, the magistrate judge construed the motion to strike as a motion to dismiss.
2 (ECF No. 91, pgs. 1-2, n.1).

3 On September 12, 2019, the magistrate judge entered findings and recommendations,
4 recommending that:

- 5 1. Defendant EMC and Randhawa's motions to dismiss be
6 granted in part and denied in part;
- 7 2. Plaintiff's battery claim against defendant Randhawa be
8 dismissed, with prejudice;
- 9 3. Defendant EMC's request to dismiss Plaintiff's battery claim
10 against defendant EMC be denied;
- 11 4. Defendant EMC and Randhawa's request to dismiss
12 Plaintiff's claim for negligent failure to obtain informed
13 consent be denied as moot; and
- 14 5. Defendant EMC and Randhawa's request to dismiss
15 Plaintiff's request for punitive damages be denied.

16 (ECF No. 91, pgs. 11-12) (footnote omitted).

17 The parties were provided an opportunity to file objections to the findings and
18 recommendations. Neither defendant EMC nor defendant Randhawa objected to the findings
19 and recommendations. On September 30, 2019, Plaintiff filed his objections. (ECF No. 94).

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

24 The majority of Plaintiff's objections are not relevant to the motions to dismiss and the
25 findings and recommendations that are currently before the Court.¹ The only claim that the
26 magistrate judge recommended be dismissed is the battery claim against defendant Randhawa,
27 and Plaintiff does not specifically address this claim in his objections. Plaintiff does complain
28 that discovery has not yet been conducted, but defendant Randhawa filed a motion to dismiss,
not a motion for summary judgment. Plaintiff did not need to submit evidence. Instead, the

¹ To the extent Plaintiff is asking for appointment of counsel, or any other relief, Plaintiff should file separate motions regarding those requests.

1 Court relies on the allegations in Plaintiff's SAC, which fail to state a battery claim against
2 defendant Randhawa.

3 Accordingly, THE COURT HEREBY ORDERS that:

- 4 1. The findings and recommendations issued by the magistrate judge on September 12,
5 2019, are ADOPTED in full;
- 6 2. Defendants EMC and Randhawa's motions to dismiss is granted in part and denied
7 in part (the Court will address the portion of the motion to dismiss that was
8 converted to a motion for summary judgment in a separate order);
- 9 3. Plaintiff's battery claim against defendant Randhawa is dismissed, with prejudice;
- 10 4. Defendant EMC's request to dismiss Plaintiff's battery claim against defendant
11 EMC is denied;
- 12 5. Defendants EMC and Randhawa's request to dismiss Plaintiff's claim for negligent
13 failure to obtain informed consent is denied as moot; and
- 14 6. Defendants EMC and Randhawa's request to dismiss Plaintiff's request for punitive
15 damages is denied.

16
17 IT IS SO ORDERED.

18 Dated: October 1, 2019

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