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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RANDY JAMES GEREN,
Plaintiff,
v.
R. FISHER, et al.,
Defendants.

No. 1:19-cv-01662-DAD-SAB (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
PLAINTIFF’S SECOND AMENDED
COMPLAINT

(Doc. No. 28)

Plaintiff Randy James Geren is a state prisoner proceeding *pro se* in this civil rights action filed pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On June 19, 2020, the assigned magistrate judge screened the second amended complaint (“SAC”) and issued findings and recommendations recommending that this action be dismissed due to plaintiff’s failure to state a cognizable claim upon which relief may be granted. (Doc. No. 28.) In particular, the magistrate judge found that plaintiff failed to state a cognizable claim of deliberate indifference to his serious medical needs because he did not allege that defendants deliberately delayed providing him medical assistance once they learned that he was suffering a serious allergic reaction, and indeed plaintiff alleges that once he told defendant nurse Nultz that he “need[ed] help” and “[it’s] getting harder to breath, and [his] pain is getting worse,” defendant Nultz activated her personal alarm to summon immediate medical care for him. (*Id.* at 5.) In

1 addition, the magistrate judge found that plaintiff failed to state a claim under California
2 Government Code § 845.6 for failure to take reasonable action to summon medical care because:
3 (1) plaintiff's SAC does not allege compliance with the Government Claims Act; (2) plaintiff's
4 allegations show that defendants did not ignore plaintiff's medical need—defendants did summon
5 immediate medical care; and (3) plaintiff's allegations do not suggest that “the timing of
6 defendants' response to plaintiff's condition was dilatory or otherwise unreasonable.” (*Id.* at 7.)
7 The magistrate judge also found that granting further leave to amend would be futile because the
8 allegations in plaintiff's original, first amended, and second amended complaints all failed to state
9 a claim for relief, despite the guidance provided to plaintiff in the court's screening orders
10 regarding the pleading and legal standards applicable to the claims he was attempting to assert.
11 (*Id.*)

12 The pending findings and recommendations were served on plaintiff and contained notice
13 that any objections thereto were to be filed within twenty-one (21) days after service. (*Id.* at 8.)
14 After receiving an extension of time to do so, plaintiff timely filed objections to the pending
15 findings and recommendations on July 20, 2020. (Doc. No. 31.)

16 In his objections, plaintiff disputes the magistrate judge's characterization of the time that
17 passed between when he started complaining of an allergic reaction to when defendants
18 summoned medical care for him as a “slight delay.” (*Id.* at 3–4.) Plaintiff contends that the total
19 delay of about one hour was not slight and that medical care should have been summoned
20 immediately when he first reported to defendant Nultz that he was having an allergic reaction.
21 (*Id.* at 4–8.) However plaintiff does not contest the magistrate judge's summary of plaintiff's
22 allegations, including that when plaintiff complained to defendant nurse Nultz about his allergic
23 reaction, she told him to go see the nurse in the clinic next door, but defendant officer Lovelady
24 subsequently denied plaintiff access to the clinic because he was not wearing a blue shirt, and
25 when plaintiff returned thirty minutes later with his shirt on, he was asked to wait outside because
26 the clinic was very busy. (Doc. No. 28 at 3–4.) After waiting outside for an additional thirty
27 minutes, plaintiff then returned to defendant Nultz because he was having difficulty breathing and
28 was in worse pain, and in response, she activated her personal alarm to summon immediate

1 medical care. (*Id.*) The undersigned agrees with the magistrate judge’s findings that plaintiff’s
2 allegations are insufficient to state a cognizable claim for deliberate indifference to a serious
3 medical need. Further, as the magistrate judge correctly noted, plaintiff alleges in his SAC that
4 defendants did summon medical care for him. Thus, his allegations are also insufficient to state a
5 claim under Government Code § 845.6 for failure to take reasonable action to summon medical
6 care. *See Castaneda v. Dep’t of Corr. & Rehab.*, 212 Cal. App. 4th 1051, 1073 (2013) (holding
7 that immunity under § 845.6 applied to defendants despite a three-week delay in summoning care,
8 because a doctor’s decision to circle “routine” instead of “urgent” on the referral form “was a
9 matter within [the doctor’s] medical judgment,” and it was “certainly not a failure to summon”).

10 Plaintiff also objects to the pending findings and recommendations because he contends
11 that he has complied with the Government Claims Act. (Doc. No. 31 at 8–9.) Plaintiff explains
12 that he timely filed the required tort claim form with the Government Claims Board on July 17,
13 2019, and in response to the Board’s May 11, 2020 letter to plaintiff requesting payment of the
14 required \$25.00 filing fee, plaintiff paid the fee on June 23, 2020. (*Id.*) In addition, plaintiff
15 attached copies of his tort claim form, the Board’s response letter, and his fee payment form as
16 exhibits to his objections to the pending findings and recommendations. (*Id.* at 15–33.) While
17 this additional information would support a decision by the court to grant plaintiff leave to further
18 amend his complaint to sufficiently allege his compliance with the Government Claims Act, the
19 undersigned agrees with the magistrate judge’s finding that the granting of further leave to amend
20 in this case would nevertheless be futile because plaintiff has failed to state a § 845.6 claim, for
21 the reasons explained above.

22 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
23 *de novo* review of this case. Having carefully reviewed the entire file, including plaintiff’s
24 objections, the court concludes that the findings and recommendations are supported by the
25 record and by proper analysis.

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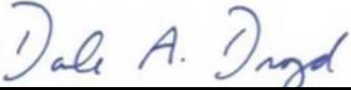
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Accordingly,

1. The findings and recommendations issued on June 19, 2020 (Doc. No. 28) are adopted in full;
2. This action is dismissed due to plaintiff's failure to state a cognizable claim for relief; and
3. The Clerk of the Court is directed to close this case.

IT IS SO ORDERED.

Dated: December 24, 2020


UNITED STATES DISTRICT JUDGE