

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSE GUADALUPE CALDERON,  
Plaintiff,  
v.  
MAGDY DANIALS, et al.,  
Defendants.

No. 1:19-cv-01734-DAD-SAB (PC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS AND DISMISSING  
ACTION FOR FAILURE TO STATE A  
CLAIM

(Doc. No. 18)

Plaintiff Jose Guadalupe Calderon is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action under 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 February 28, 2020, the assigned magistrate judge issued findings and recommendations recommending that this action be dismissed due to plaintiff’s failure to state a cognizable claim of deliberate indifference to his serious medical need. (Doc. No. 18.) Finding that plaintiff’s second amended complaint (“SAC”) was largely identical to, and contained the same deficiencies as his first two complaints, the magistrate judge recommended that the second amended complaint be dismissed without further leave to amend because further amendment would be futile. (*Id.* at 5.) Specifically, though plaintiff alleges in his SAC that defendants repeatedly misdiagnosed and treated him for gout, the magistrate judge concluded that plaintiff’s

1 allegations are “insufficient to suggest that any Defendant intentionally and with deliberate  
2 indifference prescribed gout medication despite knowing that Plaintiff did not have gout, or that any  
3 Defendant purposefully failed to address his medical needs.” (*Id.*) The findings and  
4 recommendations were served on plaintiff and contained notice that any objections thereto were  
5 to be filed within twenty-one (21) days of service. (*Id.*) On March 10, 2020, plaintiff timely filed  
6 objections to the pending findings and recommendations. (Doc. No. 21.)

7 In his objections, plaintiff does not address the analysis set forth in the pending findings  
8 and recommendations. Rather, plaintiff merely reiterates the allegations set forth in his SAC and  
9 asserts in conclusory fashion that defendants showed deliberate indifference by not trying to find  
10 another cause for his symptoms, by not allowing him to obtain a second medical opinion, and by  
11 continuing to prescribe him medication for gout. (Doc. No. 21 at 3–4.) The undersigned agrees  
12 with the magistrate judge’s findings that these allegations are insufficient to state a cognizable  
13 claim for deliberate indifference to a serious medical need.

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

18 Accordingly,

- 19 1. The findings and recommendations issued on February 28, 2020 (Doc. No. 18) are  
20 adopted in full;
- 21 2. This action is dismissed due to plaintiff’s failure to state a cognizable claim for  
22 relief; and
- 23 3. The Clerk of the Court is directed to close this case.

24 IT IS SO ORDERED.

25 Dated: April 7, 2020

26   
UNITED STATES DISTRICT JUDGE