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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KEVIN JACKSON,

Plaintiff,

Case No. 2:09-cv-3234 KJN P

vs.

TESSIE RALLOS, M.D., et al.,

Defendants.

ORDER AND

FINDINGS AND RECOMMENDATIONS

_____ /

Plaintiff is a state prisoner proceeding through counsel. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983. On June 25, 2010, defendants Rallos, Traquina, Rohrer and Mahon-Howe filed a motion to dismiss plaintiff’s claim for professional medical negligence based on the grounds that plaintiff failed to plead compliance with the California Claims Act and to comply with the statute of limitations. Defendants’ motion was noticed for hearing July 29, 2010.

On July 13, 2010, plaintiff filed a statement of non-opposition to defendants’ motion. Plaintiff does not oppose the dismissal of the second count for professional (medical) negligence, and agrees to proceed solely on count one, alleged cruel and unusual punishment based on denial of medical care in violation of the Eighth Amendment. Id.

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1 Good cause appearing, defendants' motion to dismiss will be granted. Fed. R.
2 Civ. P. 41(a)(2). The July 29, 2010 hearing will be vacated.

3 On November 30, 2009, plaintiff consented to the jurisdiction of the undersigned
4 pursuant to 28 U.S.C. § 636(c). Defendants have not filed the form indicating consent or refusal
5 to consent. Thus, the court will direct the Clerk of Court to assign a district judge to this case.


6 Accordingly, IT IS HEREBY ORDERED that:

- 7 1. The Clerk of the Court is directed to assign a district judge to this case; and
8 2. The July 29, 2010 hearing on defendants' motion to dismiss is vacated.

9 IT IS HEREBY RECOMMENDED that defendants' June 25, 2010 motion to
10 dismiss be granted. This action shall proceed solely on count one. (Compl. at 7-8.)

11 These findings and recommendations are submitted to the United States District
12 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-
13 one days after being served with these findings and recommendations, any party may file written
14 objections with the court and serve a copy on all parties. Such a document should be captioned
15 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
16 objections shall be filed and served within fourteen days after service of the objections. The
17 parties are advised that failure to file objections within the specified time may waive the right to
18 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

19 DATED: July 15, 2010

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23 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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