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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BERNARD HUGHES,
Plaintiff,
v.
MARTIN H. JANSEN, M.D.,
Defendant.

No. 2:11-cv-1856-KJM-EFB P

ORDER

Plaintiff is a state prisoner proceeding through counsel in an action brought under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On February 17, 2017, the magistrate judge filed findings and recommendations, which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen days. Neither party has filed objections to the findings and recommendations.

The court presumes that any findings of fact are correct. *See Orand v. United States*, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge’s conclusions of law are reviewed de novo. *See Britt v. Simi Valley Unified School Dist.*, 708 F.2d 452, 454 (9th Cir. 1983). Having reviewed the file, with the exception discussed below the court finds the findings and recommendations to be supported by the record and by the proper analysis.

1 At page five, the findings and recommendations contain the following statement:

2 Although plaintiff believes that he should be taking Wellbutrin
3 instead of Strattera because Strattera allegedly does not treat
4 depression and causes his mental health to deteriorate [internal
5 citations omitted], mere differences of opinion concerning the
appropriate treatment cannot be the basis of an Eighth Amendment
violation. [Citations omitted.]

6 ECF No. 110 at 5. The court does not agree that plaintiff’s allegations in this regard reflect only a
7 difference of opinion concerning the appropriate treatment for his depression. Plaintiff alleges
8 that “Wellbutrin is an antidepressant used to treat MDD [Major Depressive Disorder]” and that
9 “Strattera (atomoxetine) is a norepinephrine reuptake inhibitor used to treat Attention Deficit
10 Hyperactivity Disorder; it is not used to treat MDD.” ECF No. 60 ¶¶ 13, 14. Deliberate
11 indifference is shown if physicians choose a “course of treatment” that is “medically unacceptable
12 under the circumstances” and the course of treatment was chosen “in conscious disregard of an
13 excessive risk to plaintiff’s health.” *Jackson v. McIntosh*, 90 F.3d 330, 332 (9th Cir. 1996)
14 (citing, *inter alia*, *Farmer v. Brennan*, 511 U.S. 825, --- - ---, 114 S.Ct. 1970, 1978-79 (1994)).
15 Plaintiff’s allegations, taken together, are that he suffered from MDD, that he was successfully
16 treated for MDD with a drug used to treat MDD (Wellbutrin) but then taken off that medication
17 and prescribed a medication not used to treat MDD (Strattera). One reasonable inference from
18 plaintiff’s allegations is that he was left effectively untreated for MDD for an extended period of
19 time, leading to a nearly fatal suicide attempt. These allegations represent more than a mere
20 difference of opinion about an appropriate course of treatment.

21 That said, the court agrees with the magistrate judge that defendant Jansen’s involvement
22 in the events complained of was limited to one encounter, and that the allegations about that
23 encounter are insufficient to support a claim that defendant Jansen acted with deliberate
24 indifference to plaintiff’s serious medical needs.

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Accordingly, IT IS HEREBY ORDERED that:

1. Except as modified by this order, the findings and recommendations filed February 17, 2017, are adopted in full;
2. Defendant Jansen’s Rule 12(b)(6) motion to dismiss (ECF No. 61) is granted and defendant Jansen is dismissed from this action with prejudice;
3. Plaintiff’s motion to amend (ECF No. 103) is denied as futile; and
4. Plaintiff is granted one final opportunity to file an amended complaint that cures the deficiencies identified in the magistrate judge’s findings and recommendations with respect to the claims against CDCR and Dr. Doe within thirty days from the date of this order.

DATED: March 28, 2017


UNITED STATES DISTRICT JUDGE