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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BERNARD HUGHES,
Plaintiff,
v.
MARTIN H. JANSEN, M.D., et al.,
Defendants.

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

ORDER

Plaintiff, a state prisoner, has filed this civil rights action seeking relief 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 December 1, 2015, 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. Plaintiff has filed objections to the findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a *de novo* review of this case. The magistrate judge recommends that a document filed by plaintiff pro se on October 22, 2015, ECF No. 62, be construed as a motion for preliminary injunction and, so construed, that the motion be denied.

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1 At issue in this litigation is whether defendants are acting with deliberate indifference to
2 plaintiff's serious medical need for adequate treatment of his major depressive disorder,
3 specifically, by taking plaintiff off Wellbutrin. See ECF No. 62 at 1-2. At the time plaintiff filed
4 the motion before the court, he believed he was represented by counsel who had been appointed
5 in this matter "for the limited purposes of investigating plaintiff's claims, drafting and filing an
6 amended complaint, and assessing the need for a temporary restraining order." ECF No. 75 at 1,
7 citing ECF No. 48. By the motion before the court, he sought an order requiring his court
8 appointed counsel to seek an order requiring defendants to provide him with proper mental health
9 care. ECF No. 62 at 2.

10 On February 16, 2016, the magistrate judge issued an order requiring court appointed
11 counsel to return plaintiff's case file to him and file a statement certifying that he has done so
12 while also clarifying whether he wishes to continue to represent plaintiff in this action. ECF No.
13 75 at 2. Pending that clarification, the court will not consider whether injunctive relief is
14 appropriate. Plaintiff's motion will be denied without prejudice to its renewal, as appropriate,
15 following compliance with the magistrate judge's February 16, 2016 order.

16 The court has reviewed the allegations of the Second Amended Complaint (SAC),
17 prepared by court appointed counsel. The SAC is the operative complaint in this action. As the
18 record now shows, see ECF No. 75, plaintiff asserts that he did not have a copy of the SAC at the
19 time he filed the motion before the court. Given the allegations contained in that motion, the
20 court has requested the Special Master in *Coleman v. Brown*, Case No. 90-cv-0520 KJM KJN, to
21 check on plaintiff's current mental health status.

22 Accordingly, IT IS HEREBY ORDERED that:

- 23 1. The findings and recommendations filed December 1, 2015, are not adopted; and
- 24 2. Plaintiff's motion (ECF No. 62) is denied without prejudice.

25 DATED: February 29, 2016

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28 UNITED STATES DISTRICT JUDGE