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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT ELLIS,

Plaintiff,

v.

REDDY,

Defendant.

No. No. 2:12-cv-1691 JAM KJN P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner at High Desert State Prison, who proceeds in forma pauperis and without counsel, in this civil rights action filed pursuant to 42 U.S.C. § 1983. On September 20, 2013, the district judge adopted the undersigned’s findings and recommendations, granting defendant’s motion to dismiss, but according plaintiff leave to file an amended complaint. (ECF No. 27.) The undersigned has reviewed plaintiff’s amended complaint and, for the following reasons, recommends that this action be dismissed.

Plaintiff claims that defendant Dr. Reddy was deliberately indifferent to plaintiff’s serious medical needs. Defendant’s motion to dismiss was granted pursuant to the finding that plaintiff’s Eighth Amendment claim against Dr. Reddy was precluded on res judicata grounds through the date of final judgment in plaintiff’s prior similar case (Case No. 2:11-cv-0363 GEB CKD P), viz., December 16, 2011. (See ECF Nos. 27, 23.) The court granted plaintiff leave to file an amended complaint for the purpose of stating a cognizable Eighth Amendment claim against Dr. Reddy for

1 the period commencing December 17, 2011. However, the court noted that “neither party has
2 clarified whether Dr. Reddy works at Folsom State Prison (plaintiff’s prior place of incarceration
3 . . .), or High Desert State Prison (plaintiff’s current place of incarceration); nor does either party
4 identify the date of plaintiff’s transfer to High Desert State Prison. Clearly, if Dr. Reddy ceased
5 treating plaintiff prior to December 17, 2011, then the instant action is precluded in its entirety.”
6 (ECF No. 23 at 6 n.5.)

7 In his amended complaint (see ECF No. 28 at 5-10 (identical to the amended complaint at
8 ECF No. 26)), plaintiff states in pertinent part: “Dr. Reddy who works at CSP-Old Folsom
9 stop[ped] treating the plaintiff at or around August 2010, the petitioner (sic) was transfer[r]ed
10 12-27-13 (sic) to High Desert.” (ECF No. 28 at 6.) The concession that Dr. Reddy stopped
11 treating plaintiff in August 2010, well before the first date (December 17, 2011) on which
12 plaintiff may allege a new claim against this defendant, demonstrates that the instant action
13 should be dismissed in its entirety based on res judicata grounds.

14 Should plaintiff continue to believe that he is receiving inadequate medical treatment, he
15 must pursue his care and concerns with the medical staff at High Desert State Prison.

16 For these reasons, IT IS HEREBY RECOMMENDED that:

- 17 1. This action be dismissed with prejudice.

18 These findings and recommendations are submitted to the United States District Judge
19 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after
20 being served with these findings and recommendations, any party may file written objections with
21 the court and serve a copy on all parties. Such a document should be captioned “Objections to
22 Magistrate Judge’s Findings and Recommendations.” Any response to the objections shall be
23 filed and served within 14 days after service of the objections. The parties are advised that failure

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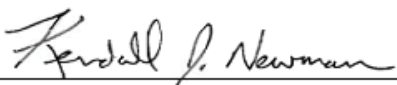
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to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: November 4, 2013

elli1691.am.cmpl.


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE