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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MICHAEL VAUGHAN,)	Civil No. 10cv1179-L(WMC)
)	
Plaintiff,)	ORDER (1) ADOPTING REPORT
)	AND RECOMMENDATION AS
v.)	MODIFIED; (2) GRANTING IN
)	PART DEFENDANTS' MOTION TO
STATE OF CALIFORNIA, <i>et al.</i> ,)	DISMISS; (3) GRANTING
)	PLAINTIFF'S REQUEST FOR
Defendants.)	LEAVE TO AMEND
_____)	

Plaintiff Michael Vaughan, a state prisoner, filed this action under 42 U.S.C. Section 1983 alleging violation of his Eighth Amendment rights by deliberate indifference to serious medical needs. Defendants filed a motion to dismiss. The case was referred to United States Magistrate Judge William McCurine, Jr. for a report and recommendation in accordance with 28 U.S.C. Section 636(b)(1)(B) and Civil Local Rule 72.3.

Plaintiff alleged he was blind on one eye when he entered Calipatria State Prison. Shortly after the commencement of his incarceration there, he started experiencing problems with the eye on which he could still see, which required surgery. After surgery, the doctors prescribed specialized medications and treatment; however, Plaintiff was denied the treatment and medications by the prison officials. Subsequently, Plaintiff's condition worsened and required another surgery. Although the second surgery was successful, Plaintiff continues to experience discomfort.

1 Plaintiff filed a complaint alleging violation of his VIIIth Amendment rights against the
2 State of California, California Department of Corrections and Rehabilitation, Calipatria State
3 Prison, Leland McEwen and Katrina Ball. D.O. Defendants filed a motion to dismiss. The
4 Magistrate Judge recommended that the motion be denied as to Defendants McEwen and Ball in
5 their individual capacities and granted as to them in their official capacities, granted as to the
6 remaining Defendants, granted as to the request for injunctive relief, and that Plaintiff be granted
7 leave to amend. (Report and Recommendation (“R&R”) at 8-9.) Defendants filed objections to
8 the Report and Recommendation and Plaintiff replied.

9 In reviewing a magistrate judge’s report and recommendation, the district court “shall
10 make a *de novo* determination of those portions of the report . . . to which objection is made,”
11 and “may accept, reject, or modify, in whole or in part, the findings or recommendations made
12 by the magistrate judge.” 28 U.S.C. § 636(b)(1). Under this statute, “the district judge must
13 review the magistrate judge’s findings and recommendations *de novo if objection is made, but*
14 *not otherwise.*” *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir.) (*en banc*)
15 (emphasis in original).

16 Defendants contend that their motion to dismiss should have been granted in full. The
17 Magistrate Judge recommended granting the motion in all respects, except as to Defendants
18 McEwen and Ball in their individual capacities. Plaintiff expressed an intention to amend the
19 complaint with respect to Defendants McEwen and Ball in their individual capacities, and the
20 Magistrate Judge recommended that such request be granted. (R&R at 4, 8, 9.) Because
21 Defendants do not object to granting leave to amend (Objections at 1), the objection in this
22 regard is largely form over substance.

23 Nevertheless, the Report and Recommendation appears to be internally inconsistent. As
24 to Defendant McEwen individually, the Magistrate Judge found that Plaintiff “failed to provide
25 facts that suggest McEwen’s involvement in any deprivation of Plaintiff’s constitutional rights.”
26 (R&R at 7.) Upon review of the allegations in the complaint, this court agrees. The motion
27 should therefore be granted in this respect rather than denied. (*Cf. id.* at 8.) With respect to
28 Defendant Ball, this court agrees that the complaint alleged sufficient facts to permit a

1 reasonable inference that she was involved in the decision to deny Plaintiff the prescribed
2 medication and treatment.

3 With respect to Defendants State of California, California Department of Corrections and
4 Rehabilitation, Calipatria State Prison, Defendants contend that their motion should be granted
5 with prejudice. The Report and Recommendation did not grant leave to amend the VIIIth
6 Amendment claim as to these Defendants, and Plaintiff did not object to it. Accordingly,
7 Defendants' objection is moot in this regard.

8 Based on the foregoing, it is hereby **ORDERED** as follows:

9 1. Defendants' objections are **SUSTAINED IN PART AND OVERRULED IN PART**.
10 The Report and recommendation is **ADOPTED AS MODIFIED** herein.

11 2. Defendants' motion is **DENIED** with respect to Defendant Ball in her individual
12 capacity and **GRANTED** in all other respects. Plaintiff's claims pursuant to 42 U.S.C. Section
13 1983 are **DISMISSED WITH PREJUDICE** as to Defendants State of California, California
14 Department of Corrections and Rehabilitation, Calipatria State Prison. Plaintiff's claim for
15 injunctive relief is **DISMISSED WITH PREJUDICE** as to all parties. In all other respects,
16 Plaintiff's request for leave to amend is **GRANTED**.

17 3. If Plaintiff chooses to file an amended complaint, he must do so no later than **August**
18 **19, 2011**. Defendants' response to the amended complaint, if any, must be filed and served
19 within the time set forth in Federal Rule of Civil Procedure 15(a)(3). If Plaintiff chooses not to
20 file an amended complaint, Defendants shall respond within the same period of time calculated
21 from August 19, 2011.

22 **IT IS SO ORDERED.**

23 DATED: July 21, 2011

24 
25 M. James Lorenz
26 United States District Court Judge

27 COPY TO:

28 HON. WILLIAM McCURINE, Jr.
UNITED STATES MAGISTRATE JUDGE

ALL PARTIES/COUNSEL