

1  
2  
3  
4  
5  
6  
7 UNITED STATES DISTRICT COURT  
8 EASTERN DISTRICT OF CALIFORNIA  
9

10 VANCE EDWARD JOHNSON,

11 Plaintiff,

12 vs.

13 BARAJAS, et al.,

14 Defendant.  
15  
16  
17

1:14-cv-01690-LJO-GSA-PC

FINDINGS AND RECOMMENDATIONS,  
RECOMMENDING THAT THIS ACTION  
PROCEED ONLY AGAINST DEFENDANT  
BARAJAS ON PLAINTIFF'S EIGHTH  
AMENDMENT CONDITIONS OF  
CONFINEMENT CLAIM, AND THAT ALL  
OTHER CLAIMS AND DEFENDANTS BE  
DISMISSED

OBJECTIONS, IF ANY, DUE IN 20 DAYS

18 Vance Edward Johnson ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma*  
19 *pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. The case now proceeds on  
20 the First Amended Complaint filed by Plaintiff on August 21, 2015. (ECF No. 9.) The First  
21 Amended Complaint names sole defendant Correctional Officer M. Barajas and alleges claims  
22 for adverse conditions of confinement under the Eighth Amendment and equal protection  
23 violations under the Fourteenth Amendment.

24 The Court screened Plaintiff's First Amended Complaint pursuant to 28 U.S.C.  
25 § 1915A and found that it states a cognizable Eighth Amendment conditions of confinement  
26 claim against defendant Barajas, but no other claims. (ECF No. 11.) On June 24, 2016,  
27 Plaintiff was granted leave to either file a Second Amended Complaint or notify the Court that  
28 he is willing to proceed only on the claim found cognizable by the Court. (*Id.*) On September

1 19, 2016, Plaintiff filed a notice informing the Court that he is willing to proceed only on the  
2 cognizable Eighth Amendment claim against defendant Barajas. (ECF No. 18.)

3 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 4 1. This action proceed only against defendant Barajas, on Plaintiff's Eighth  
5 Amendment claim for adverse conditions of confinement;
- 6 2. All remaining claims and defendants be dismissed from this action; and
- 7 3. Plaintiff's Fourteenth Amendment equal protection claim be dismissed from this  
8 action based on Plaintiff's failure to state a claim.

9 These Findings and Recommendations will be submitted to the United States District  
10 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within  
11 **twenty (20) days** after being served with these Findings and Recommendations, Plaintiff may  
12 file written objections with the Court. The document should be captioned "Objections to  
13 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file  
14 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.  
15 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394  
16 (9th Cir. 1991)).

17  
18 IT IS SO ORDERED.

19 Dated: September 21, 2016

/s/ Gary S. Austin  
20 UNITED STATES MAGISTRATE JUDGE