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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

OTONIEL TYLER PENNINGS,
Plaintiff,
v.
R. BROOMFIELD, et al.,
Defendants.

Case No. 1:15-cv-01183-AWI-EPG

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS TO DISMISS
CLAIMS CONSISTENT WITH
MAGISTRATE JUDGE’S PRIOR ORDER IN
LIGHT OF WILLIAMS DECISION

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS THAT
DEFENDANTS’ MOTION TO DISMISS BE
GRANTED

(ECF Nos. 1, 10, 12, 21, 38)

Otoniel Tyler Pennings (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. On August 24, 2015, Plaintiff consented to magistrate judge jurisdiction under 28 U.S.C. § 636(c). (ECF. No. 6.) Defendants have not consented to magistrate judge jurisdiction.

The assigned Magistrate Judge screened Plaintiff’s complaint before any defendants appeared. (ECF No. 10). On March 3, 2017, Plaintiff filed notice with the court that he was willing to proceed only on the claims found to be cognizable by the Magistrate Judge in the screening order. (ECF No. 11.) Therefore, in an order issued March 13, 2017, the Magistrate Judge found that Plaintiff had stated a cognizable claims for 1) conditions of confinement in

1 violation of the Eighth Amendment (Count I), and 2) retaliation in violation of the First
2 Amendment (Count II) against the Warden, Captain R. Broomfield, Captain B.J. Weaver,
3 Sergeant A. Perez, Correctional Officer (“C/O”) F. Nava, C/O L. Borges, C/O F. Rodriguez, John
4 Doe #2, John Doe #3, and John Doe #4 for conditions of confinement in violation of the Eighth
5 Amendment and for retaliation in violation of the First Amendment. (ECF No. 12 at 2.)
6 Additionally, the Magistrate Judge found that the Complaint states a due process claim against
7 Senior Hearing Officer C. Munoz, C/O J. Torres, and C/O L. Borges. (Id.) Finally, the Magistrate
8 Judge found that Plaintiff did not state any other cognizable claims, and several claims and
9 Defendants were dismissed. (Id. at 2-3).

10 However, on November 9, 2017, the Ninth Circuit Court of Appeals held that 28 U.S.C.
11 § 636(c)(1) requires the consent of all named plaintiffs and defendants, even those not served
12 with process, before jurisdiction may vest in a magistrate judge to dispose of a civil case.
13 *Williams v. King*, 875 F.3d 500, 504 (9th Cir. 2017). Accordingly, the Magistrate Judge did not
14 have jurisdiction to dismiss the above-described claims by way of the March 13, 2017 order. In
15 light of the *Williams* decision, on December 15, 2017, the Magistrate Judge entered findings and
16 recommendations, recommending that the following claims be dismissed: 1) deliberate
17 indifference to serious medical needs; 2) due process claim (property deprivation); and 3) due
18 process claim (appeals process). (ECF No. 38 at 10-11, 15.) The Magistrate Judge further
19 recommended that Defendants’ motion to dismiss (ECF Nos. 21, 26) be granted and that
20 Plaintiff’s due process claim (disciplinary proceeding) be dismissed with leave to amend. (ECF
21 No. 38 at 11-15.) Finally, the Magistrate Judge recommended that all John Doe Defendants be
22 dismissed without prejudice based upon Plaintiff’s failure to identify them as previously directed.
23 (Id. at 14-15.)

24 Those findings and recommendations were served on the parties and contained notice that
25 any objections thereto were to be filed within fourteen days. No objections were filed.¹

26 ¹The Findings and Recommendations were returned as undeliverable and it appears that Plaintiff was paroled.
27 Plaintiff has not yet updated his address as required by Local Rules 182(f) and 183(b). According to Local Rule
28 182(f), service of documents at the record address is fully effective. If Plaintiff fails to file a notice of change of
address by March 5, 2017, the remaining claims in this action will be dismissed without prejudice for failure to
prosecute. See Local Rule 183(b).

1 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, this
2 court has conducted a de novo review of this case. Having carefully reviewed the entire file, the
3 court finds the findings and recommendations to be supported by the record and proper analysis.

4 Accordingly, the Court hereby ORDERS as follows:

- 5 1. The findings and recommendations issued by the magistrate judge on December 15,
6 2017, are adopted in full;
- 7 2. The following claims and Defendants are dismissed from this action:
 - 8 a. Plaintiff's deliberate indifference to serious medical needs claim without
9 prejudice;
 - 10 b. Plaintiff's due process claim (property deprivation) with prejudice;
 - 11 c. Plaintiff's due process claim (appeals process) with prejudice;
 - 12 d. Plaintiff's due process claim (disciplinary proceeding) with leave to amend;
 - 13 e. Defendants Senior Hearing Officer C. Munoz, C/O J. Torres, J.C. Smith, and
14 D. Goree; and
 - 15 f. All John Doe Defendants.
- 16 3. Defendants Senior Hearing Officer C. Munoz, C/O J. Torres, and C/O L. Borges'
17 motion to dismiss (ECF No. 21, 26) is GRANTED.

18 This action now proceeds only against Defendants Warden, Captain R. Broomfield,
19 Captain B.J. Weaver, Sergeant A. Perez, Correctional Officer ("C/O") F. Nava, C/O L. Borges,
20 C/O F. Rodriguez for: 1) Conditions of confinement in violation of the Eighth Amendment; and
21 2) Count II: Retaliation in violation of the First Amendment.

22 IT IS SO ORDERED.

23 Dated: February 2, 2018

24 
25 SENIOR DISTRICT JUDGE