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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 JOHN EDWARD MITCHELL,

12 Plaintiff,

13 v.

14 J. BEARD, et al.,

15 Defendants.  
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1:15-cv-01512-DAD-GSA-PC

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

(ECF NO. 44.)

OBJECTIONS, IF ANY, DUE WITHIN  
FOURTEEN (14) DAYS

20 **I. BACKGROUND**

21 John Edward Mitchell ("Plaintiff") is a state prisoner proceeding *pro se and in forma*  
22 *pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. On October 5, 2015,  
23 Plaintiff filed the Complaint commencing this action. (ECF No. 1.)

24 Plaintiff has consented to magistrate judge jurisdiction, and no other parties have  
25 appeared. (ECF No. 6.)

26 The court previously screened Plaintiff's complaint before any defendants appeared.  
27 The court found that Plaintiff stated a cognizable Eighth Amendment conditions-of-  
28 confinement claim against defendant C/O M. Hunter, and dismissed all other claims and

1 defendants. (ECF No. 44.) The case now proceeds with the Second Amended Complaint  
2 against defendant C/O Hunter.

3 On August 31, 2017, the court issued a [screening order](#) finding that Plaintiff stated a  
4 cognizable Eighth Amendment conditions-of-confinement claim against defendant C/O M.  
5 Hunter, but no other claims against any of the Defendants. (ECF No. 44.) In the order, the  
6 magistrate judge dismissed Defendants Munoz, Ornelas, Sanchez, Barella, Thytie, Fernandez,  
7 Roska, Laguatan, Rodriguez, and 3 Doe Defendants (nurses) from this action, for Plaintiff's  
8 failure to state any claims against them. (Id.) The magistrate judge also dismissed Plaintiff's  
9 claims for excessive force, medical care, and due process, based on Plaintiff's failure to state a  
10 claim. (Id.)

11 As described below, in light of Ninth Circuit authority, this court is recommending that  
12 the assigned district judge dismiss Defendants Munoz, Ornelas, Sanchez, Barella, Thytie,  
13 Fernandez, Roska, Laguatan, Rodriguez, and 3 Doe Defendants (nurses) from this action, and  
14 dismiss Plaintiff's claims for excessive force, medical care, and due process, for Plaintiff's  
15 failure to state a claim under § 1983, consistent with the August 31, 2017, order by the  
16 magistrate judge at the screening stage.

17 **II. WILLIAMS V. KING**

18 On November 9, 2017, the United States Court of Appeals for the Ninth Circuit held  
19 that a magistrate judge lacked jurisdiction to dismiss a prisoner's case for failure to state a  
20 claim at the screening stage where the Plaintiff had consented to magistrate judge jurisdiction  
21 and defendants had not yet been served. Williams v. King, 875 F.3d 500 (9th Cir. 2017).  
22 Specifically, the Ninth Circuit held that "28 U.S.C. § 636(c)(1) requires the consent of all  
23 plaintiffs and defendants named in the complaint—irrespective of service of process—before  
24 jurisdiction may vest in a magistrate judge to hear and decide a civil case that a district court  
25 would otherwise hear." Id. at 501.

26 Here, Defendants were not served at the time the court issued its order dismissing  
27 claims and defendants, and therefore had not appeared or consented to magistrate judge

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1 jurisdiction. Accordingly, the magistrate judge lacked jurisdiction to dismiss Plaintiff's claims  
2 and defendants based solely on Plaintiff's consent.

3 In light of the holding in Williams, this court will recommend to the assigned district  
4 judge that he dismiss the defendants and claims previously dismissed by this court, for the  
5 reasons provided in the court's screening order.

### 6 **III. CONCLUSION AND RECOMMENDATIONS**

7 The court finds that this case should proceed only against defendant C/O M. Hunter, for  
8 subjecting Plaintiff to adverse conditions of confinement in violation of the Eighth  
9 Amendment, for housing Plaintiff in a bare, cold, and unsanitary cell without clothing, and all  
10 other claims and defendants should be dismissed based on Plaintiff's failure to state a claim, for  
11 the reasons provided in the court's August 31, 2017, order.

12 Therefore, for the reasons set forth above, **IT IS HEREBY RECOMMENDED** that:

- 13 1. In light of the holding in Williams, the district judge dismiss the claims and  
14 defendants previously dismissed by the magistrate judge on August 31, 2017;
- 15 2. This case now proceed with Plaintiff's Second Amended Complaint, filed on  
16 March 13, 2017, against defendant C/O M. Hunter, for subjecting Plaintiff to  
17 adverse conditions of confinement in violation of the Eighth Amendment, for  
18 housing Plaintiff in a bare, cold, and unsanitary cell without clothing;
- 19 3. All other claims and defendants be dismissed from this action for failure to state  
20 a claim under § 1983 upon which relief may be granted, for the reasons provided  
21 in the magistrate judge's August 31, 2017, order;
- 22 4. Defendants Munoz, Ornelas, Sanchez, Barella, Thytie, Fernandez, Roska,  
23 Laguatan, Rodriguez, and 3 Doe Defendants (nurses) be dismissed from this  
24 action for Plaintiff's failure to state any claims under § 1983 against them upon  
25 which relief may be granted; and
- 26 5. Plaintiff's claims for excessive force, medical care, and due process be  
27 dismissed from this action based on Plaintiff's failure to state a claim.

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