

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TONY ASBERRY,
Plaintiff,
v.
WARDEN BITER, et al.,
Defendants.

Case No. 1:16-cv-01741-DAD-MJS (PC)

**FINDINGS AND RECOMMENDATIONS
RECOMMENDING THAT THIS ACTION
PROCEED ONLY ON COGNIZABLE
CLAIMS AND THAT ALL OTHER
CLAIMS AND DEFENDANTS BE
DISMISSED**

(ECF NO. 1)

**FOURTEEN (14) DAY OBJECTION
DEADLINE**

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983. The Court screened Plaintiff's complaint (ECF No. 1), and found that it states the following cognizable claims: an Eighth Amendment claim for medical indifference against Defendants Lozovoy and Relevante (formerly identified as Doe 3, see ECF No. 14), and Eighth Amendment conditions of confinement and First Amendment retaliation claims against Defendants Ferris and Godfrey. The remaining claims were not cognizable as pled. (ECF No. 5.)

Plaintiff was ordered to file an amended complaint or notify the Court in writing if he wished to proceed only on the cognizable claims. (Id.) Plaintiff responded that he

1 does not wish to amend and instead wishes to proceed with the cognizable claims.
2 (ECF No. 7.)

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

- 4 1. This action proceed only on the following claims: an Eighth
5 Amendment claim for medical indifference against Defendants
6 Lozovoy and Relevante, and Eighth Amendment conditions of
7 confinement and First Amendment retaliation claims against
8 Defendants Ferris and Godfrey; and
- 9 2. All other claims and defendants be dismissed from this action for
10 failure to state a claim.

11 These findings and recommendations will be submitted to the United States
12 District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C.
13 § 636(b)(1). Within fourteen (14) days after being served with the findings and
14 recommendations, Plaintiff may file written objections with the Court. The document
15 should be captioned "Objections to Magistrate Judge's Findings and
16 Recommendations." Plaintiff is advised that failure to file objections within the specified
17 time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834,
18 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

19
20 IT IS SO ORDERED.

21
22 Dated: February 28, 2017

23 /s/ Michael J. Seng
24 UNITED STATES MAGISTRATE JUDGE
25
26
27
28