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8	UNITED STATES DISTRICT COURT	
9	FOR THE EASTERN DISTRICT OF CALIFORNIA	
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10	TONY ASBERRY,	No. 1:16-cv-01741-DAD-MJS (PC)
12	Plaintiff,	
13	v.	ORDER ADOPTING FINDINGS AND
13	v. WARDEN BITER, et al.,	RECOMMENDATIONS FOR ACTION TO PROCEED ONLY ON COGNIZABLE
15	Defendants.	CLAIMS AND THAT ALL OTHER CLAIMS AND DEFENDANTS BE DISMISSED
16	Defendants.	(Doc. Nos. 1, 17)
10		(Doc. 105. 1, 17)
18	Plaintiff is a state prisoner proceeding	pro se and in forma pauperis in this civil rights
19	action brought pursuant to 42 U.S.C. § 1983. The matter was referred to a United States	
20	Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302 of the United States	
21	District Court for the Eastern District of California.	
22	On January 24, 2017, the assigned magistrate judge screened plaintiff's complaint and	
23	concluded that it stated the following cognizable claims: an Eighth Amendment claim for	
24	deliberate indifference to a serious medical need against defendants Lozovoy and Relevante	
25	(formerly identified as defendant "Doe 3," see Doc. No. 14); an Eighth Amendment conditions of	
26	confinement claim against defendants Ferris and Godfrey; and a First Amendment retaliation	
27	claim against defendants Ferris and Godfrey. (Doc. No. 5.) The magistrate judge concluded that	
28	the remaining claims presented in plaintiff's complaint were not cognizable as pled. (Doc. No. 1	

1	5.) Plaintiff was ordered to file an amended complaint or notify the court in writing if he wished	
2	to proceed only on the claims found to be cognizable in the court's screening order. (Id.)	
3	Plaintiff responded that he did not wish to amend and instead wishes to proceed only on the	
4	claims found by the court to be cognizable. (Doc. No. 7.) Accordingly, on February 28, 2017,	
5	the magistrate judge issued findings and recommendations recommending that this action proceed	
6	only on the claims found to cognizable in the screening order and that the remaining claims and	
7	defendants be dismissed from this action. (Doc. No. 17.) Plaintiff filed no objections to the	
8	findings and recommendations and the time for doing so has passed.	
9	In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a	
10	de novo review of this case. Having carefully reviewed the entire file, the court finds the findings	
11	and recommendations to be supported by the record and by proper analysis.	
12	Accordingly,	
13	1. The court adopts in full the findings and recommendations filed February 28, 2017	
14	(Doc. No. 17);	
15	2. This action shall proceed only on the following claims: an Eighth Amendment	
16	claim for deliberate indifference to a serious medical need against Defendants	
17	Lozovoy and Relevante; an Eighth Amendment conditions of confinement claim	
18	against defendants Ferris and Godfrey; and a First Amendment retaliation claim	
19	against defendants Ferris and Godfrey; and	
20	3. All other claims and defendants are dismissed from this action for failure to state a	
21	claim.	
22	IT IS SO ORDERED.	
23	Dated: May 5, 2017 Jale A. Dryd	
24	UNITED STATES DISTRICT JUDGE	
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