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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

PATRICK J. CAVANAUGH,)	Case No.: 1:17-cv-0832 - LJO - JLT
Plaintiff,)	
v.)	ORDER ADOPTING IN FULL THE FINDINGS
)	AND RECOMMENDATIONS GRANTING THE
)	MOTION TO DISMISS WITH LEAVE TO
)	AMEND
DONNY YOUNGBLOOD, et al.,)	
Defendants.)	(Docs. 28, 38)
)	

Plaintiff is housed at Atascadero State Hospital. He alleges that he was housed for four weeks at Kern County’s Lerdo Pre-Trial Facility in order to attend a hearing in Kern County Superior Court, and while at Lerdo was erroneously placed in a cell with Norteno gang members, despite that he was a Norteno gang drop-out. Within days, he was attacked and suffered injuries. Plaintiff asserts the state defendants should have acted to prevent his injuries.

The magistrate judge found that, based upon the facts alleged and revealed during the hearing upon Defendants’ motion to dismiss, the Eighth Amendment does not apply in this case. Therefore, the magistrate judge recommended the motion be granted with leave to amend claims based upon the Fourteenth Amendment. (Doc. 38 at 1-2) In addition, the magistrate judge recommended the claim for negligence be dismissed with leave to amend, and Plaintiff’s request to dismiss defendant Price be granted. (Id. at 4, 6). The parties were given fourteen days to file any objections to this recommendation. (Id. at 6) In addition, the parties were “advised that failure to file objections within

1 the specified time may waive the right to appeal the Order of the District Court.” (Id., citing Martinez
2 v. Ylst, 951 F.2d 1153 (9th Cir. 1991). To date, no objections have been filed.

3 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C) and Britt v. Simi Valley United
4 School Dist., 708 F.2d 452, 454 (9th Cir. 1983), this Court conducted a de novo review of the case.
5 Having carefully reviewed the file, the Court finds the Findings and Recommendations are supported
6 by the record and proper analysis.

7 Accordingly, **IT IS HEREBY ORDERED:**

- 8 1. The Findings and Recommendations dated March 12, 2018 (Doc. 38) are **ADOPTED**
9 **IN FULL;**
- 10 2. The motion to dismiss the complaint is **GRANTED** without leave to amend regarding
11 any Eighth Amendment claims, but with leave to amend to assert claims under the
12 Fourteenth Amendment;
- 13 3. The motion to dismiss the claim based upon state law negligence is **GRANTED** with
14 leave to amend;
- 15 4. Plaintiff’s request to dismiss defendant Price is **GRANTED**; and
- 16 5. Plaintiff’s amended Complaint is due thirty (30) days from the date of this Order.

17
18 IT IS SO ORDERED.

19 Dated: April 2, 2018

/s/ Lawrence J. O’Neill
20 UNITED STATES CHIEF DISTRICT JUDGE