

1 Recommendations specifically recommended that Defendants' motion to dismiss Plaintiff's request
2 for injunctive relief and official-capacity claims for monetary damages be granted, Defendants'
3 motion to dismiss certain claims for failure to state a cognizable claim for relief be denied, Plaintiff's
4 motion to amend and/or supplement the second amended complaint be granted to the cure the Rule 20
5 defect only, and Defendants' motion to sever Plaintiff's medical claim be denied, without prejudice.
6 The Findings and Recommendations were adopted in full on September 28, 2016, and the Clerk of
7 Court was directed to file and docket Plaintiff's third amended complaint which was attached to his
8 objections (Doc. No. 53).

9 On February 24, 2017, the undersigned dismissed Plaintiff's third amended complaint, with
10 leave to amend, for failure to comply with Rule 8 of the Federal Rules of Civil Procedure.

11 On June 30, 2017, Plaintiff filed an amended complaint, along with a separate motion
12 requesting to sever the medical claims and to proceed in this action only on the retaliation claim
13 against Defendant Johnson, the cruel and unusual punishment claim against Defendants Johnson,
14 Ybarra, Alva, Chan, O'Daniels, Franco, Sanchez, Esqueda, Santos and John Doe (Assistant Warden),
15 and due process claim against Defendants Santos, Esqueda, and Ybarra.

16 II.

17 DISCUSSION

18 The Court will grant Plaintiff's request to sever and file a new action regarding the allegations
19 presented in the amended complaint, filed June 30, 2017, and allow this action to proceed on the
20 second amended complaint, filed May 4, 2015. As Plaintiff has now expressed a desire to not further
21 amend the complaint, but rather to proceed on the second amended complaint, filed May 4, 2015, the
22 Court will reinstate the second amended complaint as the operative complaint in this action, and direct
23 Defendants to file a further response within thirty (30) days from the date of service of this order.

24 III.

25 ORDER

26 Based on the foregoing, it is HEREBY ORDERED that:

27 1. Plaintiff's motion to sever his deliberate indifference to a serious medical claim as set
28 forth in the amended complaint, filed June 30, 2017, is granted, and the Clerk of Court is directed to

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open a new prisoner civil rights complaint and file the fourth amended complaint (Doc. No. 67)¹,
along with the motion to proceed in forma pauperis in the new action(Doc. No. 69);

2. This action proceeds on Plaintiff’s second amended complaint, filed May 4, 2015; and

3. Defendants Johnson, Ybarra, Alva, Chan, O’Daniels, Franco, Sanchez, Esqueda,
Santos, and John Doe (Assistant Warden), shall file a further response to the second amended
complaint within **thirty (30)** days from the date of service of this order.

IT IS SO ORDERED.

Dated: August 1, 2017


UNITED STATES MAGISTRATE JUDGE

¹ In directing that a new action be opened, the Court expresses no opinion as to whether Plaintiff has in fact stated a cognizable claim for deliberate indifference.