

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

MICHAEL PICKARD,  
Plaintiff,  
v.  
SPEARMAN, et al.,  
Defendant

**Case No. 1:18-cv-00450-JLT (PC)**

# **FINDINGS AND RECOMMENDATIONS FOR ACTION TO PROCEED ON PLAINTIFF'S EIGHTH AMENDMENT CLAIM AGAINST DR. HTAY AND C/Os DOE #1, #2, AND #3, DISMISSING ALL OTHER CLAIMS AND DEFENDANTS**

(Doc. 11)

## 21-DAY DEADLINE

## CLERK TO ASSIGN A DISTRICT JUDGE

For the reasons discussed in the First Screening Order (Doc. 11), Plaintiff has stated a cognizable claim for deliberate indifference to his serious medical need in violation of the Eighth Amendment against Dr. Htay and C/Os Doe #1, #2, and #3 upon which he should be allowed to proceed. That order granted Plaintiff leave to file an amended complaint to potentially make more of his claims cognizable, or to file a notice that he did not desire to do so. (*Id.*) The order further indicated that if Plaintiff did not respond, the Court would recommend that the action only proceed on the claims found cognizable. (*Id.*) Plaintiff did not respond.

Accordingly, the Court RECOMMENDS that Plaintiff proceed in this action on his Eighth Amendment Claims found cognizable in the First Screening Order (Doc. 11) against Dr. Dr. Htay and C/Os Doe #1, #2, and #3 and that all other claims and defendants be dismissed. The Clerk of

1 the Court is directed to randomly assign a District Judge to this action.

2 These Findings and Recommendations will be submitted to the United States District  
3 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). **Within 21**  
4 **days** after being served with these Findings and Recommendations, Plaintiff may file written  
5 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s  
6 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the  
7 specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834,  
8 839 (9th Cir. Nov. 18, 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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10 IT IS SO ORDERED.

11 Dated: **December 17, 2018**

12 **/s/ Jennifer L. Thurston**  
13 UNITED STATES MAGISTRATE JUDGE

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