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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KELVIN CANNON,
Plaintiff,
v.
KONG, *et al.*,
Defendants.

Case No. 1:18-cv-00666-LJO-JDP
ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS THAT PLAINTIFF
BE PERMITTED TO PROCEED ON
COGNIZABLE CLAIMS AND THAT NON-
COGNIZABLE CLAIMS BE DISMISSED
WITH LEAVE TO AMEND
ECF No. 9

Plaintiff is a state prisoner proceeding without counsel in this civil rights action brought under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On March 29, 2019, the magistrate judge screened plaintiff’s complaint. ECF No. 9. The magistrate judge issued findings and recommendations that (1) plaintiff has stated a retaliation claim against defendant Gallagher and conditions-of-confinement claims against defendants Kong, Gonzalves, Torres, Vang, Rocha, Perez, Curtis, Correctional Officer Gamboa, Flores, Brandon, Hernandez, Podsakoff, Wilson, Gallagher, and Shelby; (2) plaintiff’s remaining claims should be dismissed without prejudice; and (3) plaintiff should be granted leave to amend the

1 complaint.¹ *Id.* Plaintiff did not file objections to the findings and recommendations, and the
2 time to do so has expired.

3 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Rule 304, this
4 court has conducted a de novo review of this case. Having carefully reviewed the entire file, the
5 court finds the findings and recommendations to be supported by the record and proper analysis.

6 Accordingly, IT IS ORDERED that:

- 7 1. The findings and recommendations issued by the magistrate judge on March 29, 2019,
8 ECF No. 9, are ADOPTED IN FULL.
- 9 2. Plaintiff states a retaliation claim against defendant Gallagher.
- 10 3. Plaintiff states conditions-of-confinement claims against defendants Kong, Gonzalves,
11 Torres, Vang, Rocha, Perez, Curtis, Correctional Officer Gamboa, Flores, Brandon,
12 Hernandez, Podsakoff, Wilson, Gallagher, and Shelby.
- 13 4. Plaintiff's remaining claims are dismissed without prejudice, and plaintiff is granted
14 leave to amend the complaint.
- 15 5. If plaintiff files a second amended complaint, defendants Kong, Gonzalves, Torres,
16 Vang, Rocha, Perez, Curtis, Correctional Officer Gamboa, Flores, Brandon,
17 Hernandez, Podsakoff, Wilson, Gallagher, and Shelby are not required to respond until
18 the court screens the amended complaint.

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20 IT IS SO ORDERED.

21 Dated: May 1, 2019

21 /s/ Lawrence J. O'Neill
22 UNITED STATES CHIEF DISTRICT JUDGE

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27 ¹ Plaintiff filed a first amended complaint on April 8, 2019. ECF No. 10. The magistrate judge
28 screened plaintiff's first amended complaint and concluded that it failed to state a claim. ECF
No. 11. Accordingly, plaintiff withdrew his first amended complaint, ECF No. 12, and the action
proceeds on plaintiff's original complaint, ECF No. 13.