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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KELVIN CANNON,

Plaintiff,

v.

FNU GALLAGHER; FNU GAMBOA;
FNU PEREZ; FNU ROCHA; FNU VANG;
FNU KONG; FNU GONSALVES; FNU
TORRES; FNU BRANDON; FNU
HERNANDEZ; FNU PODSAKOFF; FNU
WILSON; FNU SHELBY,

Defendant.

Case No. 1:18-cv-00666-JLT-HBK

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS

ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT

ORDER DISMISSING DEFENDANTS
HERNANDEZ, WILLIAMS, AND FLORES

(Docs. 70, 95)

Kelvin Cannon alleged that correctional officials at California State Prison-Corcoran failed to adhere to the prison’s Heat Plan, resulting in Plaintiff being exposed to excessive heat without any accommodations. (*See generally* Doc. 1) Plaintiff also alleged a retaliation claim against Gallagher. The matter was referred to the assigned magistrate judge under 28 U.S.C. § 636(b)(1)(B) and Eastern District of California Local Rule 302.

The magistrate judge issued findings and recommendations to grant Defendants’ motion for summary judgment as to Plaintiff’s heat related Eighth Amendment conditions of confinement claims and Plaintiff’s First Amendment retaliation claims. (*See generally* Doc. 95 at 1-24 (conditions of confinement); *id.* at 24-28 (retaliation claim).) Plaintiff objected. (Doc. 96.) According to 28 U.S.C. § 636(b)(1)(C), the Court has conducted a *de novo* review of this case.

1 Having carefully reviewed the entire file, the Court adopts the findings and recommendations in
2 full.

3 First, Plaintiff objects that the magistrate judge ignored the fact that he is an inmate
4 patient taking medications that make him particularly susceptible to the heat. (*Id.* at 1.) More
5 generally, but relatedly, Plaintiff asserts that the magistrate judge failed to consider the totality of
6 the relevant circumstances in evaluating his Eighth Amendment claim. (*Id.* at 1-4, 5.) Contrary
7 to Plaintiff's assertions, the magistrate judge found that there was no dispute that Plaintiff took
8 medications that made him susceptible to heat and considered that fact, among many others, as
9 part of the totality of the circumstances. (*See* Doc. 95 at 10 (noting Plaintiff took medications
10 making him susceptible to heat); *id.* at 19 (noting whether the situation of which a prisoner
11 complains is sufficiently serious and extreme will depend upon the circumstances of the particular
12 case, the nature of the condition, and the duration of condition and/or deprivation); *id.* at 19-21
13 (considering totality of circumstances).)

14 Plaintiff also criticizes the findings and recommendations where it notes that Plaintiff did
15 not purchase a fan while housed in general population. (*Id.* at 2.) Plaintiff suggests this fact is
16 irrelevant, as it could not absolve defendants from failing to permit him to sit in the cooler
17 dayroom. (*See id.*) Although the findings and recommendations do mention that Plaintiff
18 "admits he was permitted a fan . . . but did not buy one," (Doc. 95 at 20), the Court does not
19 interpret the analysis in the findings and recommendations as turning on Plaintiff's *choice not to*
20 *purchase a fan*. Rather, the findings and recommendations focus on the fact that Plaintiff *did not*
21 *possess* a fan. (Doc. 95 a 20 (reasoning that "80-degree temperatures indoors without access to a
22 fan or cool water misting may be uncomfortable" yet concluding that those conditions are not
23 "extreme and/or inhumane" in violation of the Eighth Amendment).) The magistrate judge
24 acknowledged that high temperatures accompanied by inadequate cooling or other heat-related
25 accommodations can constitute an objectively serious condition of confinement but found that the
26 record did not support such a finding in this case, because (a) Plaintiff acknowledged he had no
27 way to measure the temperatures and (b) the detailed logs from Defendants revealed indoor
28 temperatures in the areas where Plaintiff was housed never exceeded 90 degrees Fahrenheit in

1 either 2016 and 2017, staying primarily in the 70's in 2016 with the hottest temperature recorded
2 at 83 degrees. Similarly, in 2017, the logs reflected warmer temperatures but never reached
3 higher than 86 degrees on August 4, 2017. (*Id.* at 19–20.)

4 Critically, the magistrate judge also discussed that, under the “subjective” prong of the
5 deliberate indifference standard, a correctional official must “both be aware of facts from which
6 the inference could be drawn that a substantial risk of serious harm exists, and he must also draw
7 the inference.” (*Id.* at 19 (*quoting Farmer v. Brennan*, 511 U.S. 825, 834 (9th Cir. 1994).) The
8 court finds that a grant of summary judgment on the deliberate indifference claim can be justified
9 on this ground alone. Although Plaintiff attests to his own self-reported symptoms—symptoms
10 that he describes as serious and that he associated with excessive heat—there is no evidence that
11 Plaintiff ever manifested physical symptoms in front of any other person such that any Defendant
12 would have been aware that Plaintiff was at a substantial risk of serious harm.

13 Although Plaintiff also objects to the findings and recommendations’ conclusions
14 regarding the retaliation claim, he does not discuss that claim in any detail in his objections. (*Id.*)
15 The Court agrees with the findings and recommendations that there is no evidence in the record
16 suggesting that Defendant Gallaher took any retaliatory action against Plaintiff. Therefore,
17 summary judgment in favor of Defendant Gallaher on that claim is warranted. Thus, the Court

18 **ORDERS:**

- 19 1. The findings and recommendations (Doc. 95) are **ADOPTED IN FULL**.
- 20 2. Defendants’ motion for summary judgment (Doc. 70) is **GRANTED**.
- 21 3. Defendants Hernandez, Williams, and Flores are **DISMISSED WITH PREJUDICE**
22 pursuant to Plaintiff’s stipulation (Doc. 77 at 2).
- 23 4. The Clerk of Court shall terminate any pending motions, close this case, and enter
24 judgment against Plaintiff.

25
26 IT IS SO ORDERED.

27 Dated: May 3, 2022

28 
UNITED STATES DISTRICT JUDGE