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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

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11 RAYMOND PEYTON,
12 Plaintiff,
13 vs.
14 BRIAN CATES,
15 Defendant.

No. 1:22-cv-00151-JLT-EPG (PC)
ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS
(Doc. No. 18)

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18 Raymond E. Peyton alleges violations of the Equal Protection Clause and the Eighth
19 Amendment to the United States Constitution, related to the dangers posed to him by COVID
20 protocols and overcrowding at his prison, and the denial of his request for temporary medical
21 parole. Peyton further presents argument regarding whether Defendant Cates is entitled to
22 immunity on the claims at issue.

23 Peyton first filed this suit in state court, and Defendant Brian Cates¹ removed the case to
24 federal court on February 3, 2022. (Doc. 1.) At the time of removal, Peyton had already once
25 amended his original complaint. Most of the factual and legal allegations pertinent to this case
26 were not included in Peyton's first amended complaint but were instead in the case management
27 statement. Peyton was given leave to amend his complaint to comply with Local Rule 220, which

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¹ Cates is the Warden of California Correctional Institution.

1 requires a pleading to be “complete in itself without reference” to another filing. (Docs. 7, 12.)
2 Peyton’s third amended complaint failed to state cognizable claims. (Doc. 16.) On April 25,
3 2022, Peyton filed a fourth amended complaint. (Doc. 17.)

4 Peyton’s fourth amended complaint alleges deficient COVID policies, including the
5 continued transfer of inmates to the facility and the facility’s operation at maximum capacity, as
6 well as the denial of Peyton’s request to be released on temporary medical parole. Peyton further
7 complains that overcrowding within his facility has subjected him to increased risk of attack and
8 threats.

9 On May 5, 2022, the assigned magistrate judge entered findings and recommendations
10 that this action be dismissed for failure to state a claim and without further leave to amend. (Doc.
11 18). As noted in the findings and recommendations, Peyton’s fourth amended complaint failed
12 to sufficiently allege that he was *personally* at risk of serious harm and that Cates acted with
13 deliberate indifference. Peyton was given twenty-one days to file objections to the findings and
14 recommendations. (*Id.*)

15 On May 16, 2022, Peyton filed objections to the findings and recommendations. (Doc.
16 20). On May 19, 2022, Defendant Cates filed a response to the objections. (Doc. 21). To cure
17 the deficiencies identified in the findings and recommendations, Peyton points to allegations
18 included in his earlier filings. But, as noted in the screening order, Peyton was instructed multiple
19 times that his amended pleadings superseded his earlier pleadings such that he was not free to
20 refer to his earlier pleading in support of his claims. (Doc. 18, p. 11 n.4). Peyton further restates
21 his allegation that Cates violated state policy regarding inmate transfers—a claim which is
22 insufficient to demonstrate a Constitutional violation—and incorrectly states that the findings
23 and recommendations failed to address his age-based equal protection claim. (Doc. 18 at 9, 15.)

24 Peyton’s objections also raise new factual allegations for the first time, including that he
25 was housed with ill inmates, worked with ill inmates, ate with ill inmates, and eventually became
26 ill himself due to apparent lack of social distancing. Even if these facts were sufficient to save
27 the complaint, the Court will not consider allegations raised for the first time in Peyton’s
28 objections. *See Brown v. Roe*, 279 F.3d 742, 744–45 (9th Cir. 2002); *United States v. Howell*,

1 231 F.3d 615, 621–22 (9th Cir. 2000).

2 According to 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, this Court has conducted a
3 *de novo* review of this case. Having carefully reviewed the entire file, including Peyton’s
4 objections and Cates’s response, the Court concludes that the findings and recommendations are
5 supported by the record and proper analysis. Thus, the Court **ORDERS** that:

- 6 1. The findings and recommendations issued on May 5, 2022 (Doc. 18), are
7 **ADOPTED** in full.
- 8 2. Plaintiff’s fourth amended complaint (Doc. 17) is **DISMISSED** for failure to state
9 a claim and without further leave to amend.
- 10 3. The Clerk of Court is directed to close this case, as this order terminates the matter
11 in its entirety.

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13 IT IS SO ORDERED.

14 Dated: June 27, 2022


UNITED STATES DISTRICT JUDGE