6 | 7 | 8 | UNITED STATES DISTRICT COURT 9 | EASTERN DISTRICT OF CALIFORNIA

DAVID WAYNE WILSON,) Case No.: 1:22-cv-00278-DAD-SAB (PC)
Plaintiff, v. GABINO MERCADO, et al., Defendants.)) FINDINGS AND RECOMMENDATIONS) RECOMMENDING DISMISSAL OF CERTAIN) CLAIMS AND DEFENDANTS) (ECF Nos. 15, 17))

Plaintiff David Wayne Wilson is proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983.

On May 2, 2022, the Court screened Plaintiff's complaint and found that he stated a cognizable claim for unconstitutional conditions of confinement against Defendants Mercado and Taylor and a cognizable retaliation claim against Defendant Mercado. (ECF No. 15.) However, Plaintiff was advised that he failed to state any other cognizable claims. (Id.) Therefore, Plaintiff was informed that he could file an amended complaint or a notice of intent to proceed on the claims found to be cognizable. (Id.)

On May 19, 2022, Plaintiff notified the Court of his intent to proceed on the claims found to be cognizable. (ECF No. 17.) Therefore, the Court will recommend that this action proceed only on Plaintiff's unconstitutional conditions of confinement claim against Defendants Mercado and Taylor and retaliation claim against Defendant Mercado. Fed. R. Civ. P. 8(a); <u>Ashcroft v. Iqbal</u>, 556 U.S.

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662, 678 (2009); Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007); Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010).

Accordingly, it is HEREBY RECOMMENDED that:

- This action proceed only against on Plaintiff's claim for unconstitutional conditions of confinement against Defendants Mercado and Taylor and retaliation claim against Defendant Mercado; and
- 2. All other claims and Defendants be dismissed for failure to state a cognizable claim.

These Findings and Recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within **fourteen (14) days** after being served with these Findings and Recommendations, Plaintiff may file written objections with the Court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections within the specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: May 20, 2022

UNITED STATES MAGISTRATE JUDGE