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

KYLE DAVID MILTON,  
Plaintiff,  
v.  
B.M. TRATE, et al.,  
Defendants.

Case No. 1:22-cv-00988-EPG (PC)  
FINDINGS AND RECOMMENDATIONS,  
RECOMMENDING THAT CERTAIN  
CLAIMS AND DEFENDANTS BE  
DISMISSED  
(ECF Nos. 1 & 11)  
OBJECTIONS, IF ANY, DUE WITHIN  
FOURTEEN DAYS  
ORDER DIRECTING CLERK TO ASSIGN  
DISTRICT JUDGE

Kyle David Milton (“Plaintiff”) is incarcerated at Atwater U.S. Penitentiary and is proceeding *pro se* and *in forma pauperis* in this civil rights action.

Plaintiff filed the complaint commencing this action on August 8, 2022. (ECF No. 1). The Court screened Plaintiff’s complaint. (ECF No. 11). The Court found that only the following claims should proceed past the screening stage: Plaintiff’s Eighth Amendment claims against defendants Trate, Dr. Paltenghi, and Dr. Grassely for deliberate indifference to his serious medical needs and Plaintiff’s Fifth Amendment claims against defendants Trate, Dr. Paltenghi, and Dr. Grassely for violating his equal protection rights. (*Id.*).

The Court gave Plaintiff thirty days to either: “a. File a First Amended Complaint that is **no longer than twenty pages (including exhibits)**; b. Notify the Court in writing that he does not want to file an amended complaint and instead wants to proceed only on his Eighth

1 Amendment claims against defendants Trate, Dr. Paltenghi, and Dr. Grassely for deliberate  
2 indifference to his serious medical needs and his Fifth Amendment claims against defendants  
3 Trate, Dr. Paltenghi, and Dr. Grassely for violating his equal protection rights; or c. Notify the  
4 Court in writing that he wants to stand on his complaint.” (*Id.* at 16-17). On December 27,  
5 2022, Plaintiff filed a notice that he wants to proceed on the claims that the Court found should  
6 proceed past screening. (ECF No. 12).<sup>1</sup>

7 Accordingly, for the reasons set forth in the Court’s screening order that was entered on  
8 December 8, 2022 (ECF No. 11), and because Plaintiff has notified the Court that he wants to  
9 proceed on the claims that the Court found should proceed past screening (ECF No. 12), it is  
10 **HEREBY RECOMMENDED** that all claims and defendants be dismissed, except for Plaintiff’s  
11 Eighth Amendment claims against defendants Trate, Dr. Paltenghi, and Dr. Grassely for  
12 deliberate indifference to his serious medical needs and Plaintiff’s Fifth Amendment claims  
13 against defendants Trate, Dr. Paltenghi, and Dr. Grassely for violating his equal protection  
14 rights.

15 These findings and recommendations will be submitted to the United States district  
16 judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within  
17 **fourteen (14) days** after being served with these findings and recommendations, Plaintiff may  
18 file written objections with the Court. The document should be captioned “Objections to  
19 Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file  
20 objections within the specified time may result in the waiver of rights on appeal. *Wilkerson v.*  
21 *Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394  
22 (9th Cir. 1991)).

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26 <sup>1</sup> Among other things, Plaintiff also includes allegations regarding his attempts to exhaust administrative  
27 remedies, including what occurred after Plaintiff filed his complaint. Plaintiff has chosen not to amend his  
28 complaint, and the allegations in his notice are not part of the complaint. However, if any defendant files a motion  
to dismiss or for summary judgment based on failure to exhaust available administrative remedies, Plaintiff will  
have an opportunity to respond. At this time the Court takes no position on the issue.

