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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ARTHUR RAY DEERE, Sr.,

Plaintiff,

v.

JOE LIZARRAGA, et al.,

Defendants.

No. 2:16-cv-1694 DB P

ORDER

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action under 42 U.S.C. § 1983. In his first amended complaint, plaintiff alleges the air quality at Mule Creek State Prison was so poor that it worsened his Chronic Obstructive Pulmonary Disease and his overall health. Plaintiff also complains that he was celled with another inmate in a single cell. On screening, the court found plaintiff stated a cognizable Eighth Amendment claim against defendant Lizarraga but failed to state a claim regarding his celling. (Order filed June 16, 2017 (ECF No. 16).) The court gave plaintiff thirty days to file a second amended complaint. Plaintiff was informed that if he failed to do so, the case would proceed only on his Eighth Amendment air quality claim.

On July 24, 2017, plaintiff filed a document in which he stated that he was in the hospital having emergency heart surgery when the court’s June 16 order was served on him. (ECF No. 17.) Plaintiff states that he was unable to file an amended complaint in a timely manner and

1 therefore will proceed only on his Eighth Amendment air quality claim. However, plaintiff then  
2 goes on to describe why he feels he has a cognizable claim regarding his ceiling.

3 Because plaintiff shows good cause for his failure to file a timely second amended  
4 complaint, and because it is unclear from his recent filing whether he wishes to file one, the court  
5 will give plaintiff one additional extension of time. Plaintiff is advised to adhere to the  
6 requirements for filing an amended complaint set out in the June 16 order.

7 Accordingly, IT IS HEREBY ORDERED that within thirty days of the date of this order,  
8 plaintiff shall file any second amended complaint. If plaintiff fails to do so, this case will proceed  
9 on plaintiff's Eighth Amendment claim regarding air quality against defendant Lizarraga as set  
10 out in the first amended complaint.

11 Dated: July 25, 2017

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14 DEBORAH BARNES  
15 UNITED STATES MAGISTRATE JUDGE  
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