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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

NICHOLAS PATRICK,
Plaintiff,
v.
HITCHCOCK, et al.,
Defendants.

No. 2:17-cv-01045-TLN-CMK

ORDER

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to Eastern District of California local rules.

On February 15, 2018, the magistrate judge filed findings and recommendations (the “F&R”) herein, which were served on Plaintiff and which contained notice that Plaintiff may file objections within a specified time. (ECF No. 10.) Timely objections to the F&R have been filed. (ECF No. 11.)

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304(f), this Court has conducted a de novo review of this case. Having carefully reviewed the entire file, the Court finds the F&R to be supported by the record and by proper analysis, except as set forth in the next paragraph.

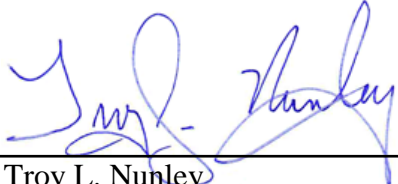
The objections fail to identify any factual or legal error in the F&R. (ECF No. 11.)

1 Rather, the Court construes the objections as a request for leave to file an amended complaint.
2 “[A] district court should grant leave to amend even if no request to amend the pleading was
3 made, unless it determines that the pleading could not possibly be cured by the allegation of other
4 facts.” *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc). The Court will give two
5 representative examples of deficiencies in Plaintiff’s complaint identified in the F&R. First, the
6 F&R states that “[P]laintiff has not alleged facts sufficient to show that, objectively, he was
7 incarcerated under conditions presenting a substantial safety risk.” (ECF No. 10 at 4.) Second,
8 the F&R states Plaintiff “fails to allege any facts to suggest that any defendant knew of or should
9 have known of a safety risk, or that any defendant knew of a risk and disregarded it.” (ECF No.
10 10 at 4.) These are of the sort of deficiencies that additional factual allegations might cure.
11 Consequently, the Court will grant Plaintiff leave to file an amended complaint. Anything in the
12 F&R to the contrary is not adopted.

13 Accordingly, IT IS HEREBY ORDERED that:

- 14 1. The findings and recommendations filed February 15, 2018 (ECF No. 10), are
15 adopted in full, except as stated above.
- 16 2. Plaintiff’s complaint (ECF No. 1) is dismissed for failure to state a claim. Plaintiff
17 has thirty (30) days from the date this Order is filed to file an amended complaint. The amended
18 complaint must bear the docket number assigned to this case and must be labeled “First Amended
19 Complaint.”
- 20 3. Plaintiff’s motion for injunctive relief (ECF No. 7) is denied.

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22 Dated: March 30, 2018

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25 Troy L. Nunley
26 United States District Judge
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