

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

THOMAS BLAKE KENNEDY,

Plaintiff,

v.

F. GONZALEZ, et al.,

Defendants.

CASE NO. 1:09-cv-01161-AWI-SKO PC

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, AND DENYING
DEFENDANTS' MOTION TO STRIKE
AND/OR DISMISS

(Docs. 22 and 32)

Plaintiff Thomas Blake Kennedy, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on July 6, 2009. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

This action is proceeding on Plaintiff's Eighth Amendment claim against Defendants Cate and Gonzalez arising out of policies and practices that led to the long term denial of outdoor exercise while Plaintiff was housed at the California Correctional Institution. On August 4, 2011, Defendants filed both an answer and a motion to strike and/or dismiss Plaintiff's injunctive relief claim and official capacity claims. Fed. R. Civ. P. 12(b)(6), (f). On August 12, 2011, the Magistrate Judge filed a Findings and Recommendations recommending that Defendants' motion be denied. The parties were given twenty days within which to file objections, but no objections were filed.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a de novo review of this case. Having carefully reviewed the entire file, the Court finds the Findings and Recommendations to be supported by the record and by proper analysis.

///

1 Accordingly, IT IS HEREBY ORDERED that:

- 2 1. The Findings and Recommendations, filed on December 8, 2011, is adopted in full;
3 and
4 2. Defendants' motion to strike and/or dismiss, filed on August 4, 2011, is DENIED.

5
6 IT IS SO ORDERED.

7 Dated: February 13, 2012

8 
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
CHIEF UNITED STATES DISTRICT JUDGE