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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ERIC WHEELER,)	1:12cv00861 LJO DLB PC
)	
Plaintiff,)	
)	ORDER ADOPTING FINDINGS AND
vs.)	RECOMMENDATIONS AND GRANTING
)	DEFENDANTS' MOTION TO DISMISS
KATHLEEN ALISON, et al.,)	(Document 37)
)	
Defendants.)	

Plaintiff Eric Wheeler (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action. Plaintiff filed his complaint on May 25, 2012.

On August 22, 2013, Defendants Murrieta, Lowder, Loftis, Duck and Alison¹ filed a Motion to Dismiss the claim for damages against Defendants in their official capacity pursuant to Federal Rule of Civil Procedure 12(b)(6). The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On November 21, 2013, the Court issued [Findings and Recommendations](#) that Defendants’ motion be granted. The Findings and Recommendations were served on the parties

¹ Defendants Ross, Mui and Ancheta have not yet been served. Defendant Neubarth requested an extension of time to file an answer, which was granted on December 26, 2013.

1 and contained notice that any objections were to be filed within thirty days. Neither party has
2 filed objections.
3

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

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. The Findings and Recommendations, filed on November 21, 2013, are adopted;
- 9 2. Defendants' Motion to Dismiss (Document 29) is GRANTED;
- 10 3. Plaintiff's claim for damages against Defendants in their official capacity is
11 DISMISSED; and
- 12 4. Defendants are ORDERED to file a responsive pleading within thirty (30) days of
13 the date of service of this order.

14 IT IS SO ORDERED.

15 Dated: January 2, 2014

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE