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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JOAQUIN MURILLO,

 Plaintiff,

 v.

HOLLAND, et al.,

 Defendants.

Case No. 1:15-cv-00266-LJO-JLT (PC)

**ORDER ADOPTING FINDINGS
AND RECOMMENDATION ON
DEFENDANTS’ MOTION TO DISMISS**

(Docs. 53, 57)

Plaintiff, Joaquin Murillo, is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action under 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On April 27, 2017, the Magistrate Judge filed a Findings and Recommendations on Defendants’ motion to dismiss, recommending that it be granted in part and denied in part, which was served on the parties and notified the parties that objections were to be filed within twenty-one days. (Doc. 57.) Neither side filed objections. Local Rule 304(b), (d).

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the 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.

Accordingly, **IT IS HEREBY ORDERED** that:

- 1. the Findings and Recommendations, filed on April 27, 2017, are adopted in full;
- 2. Defendants’ motion to dismiss, filed on January 18, 2017 (Doc. 53), is

GRANTED in part and **DENIED in part** as follows:

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- a. Defendants’ motion is **GRANTED** as to Plaintiff’s claims under California law since he failed to comply with the California Government Claims Act;
- b. Defendants’ motion is **GRANTED** as to Plaintiff’s claims against Defendants in their official capacities since they are entitled to immunity under the Eleventh Amendment;
- c. Defendants’ motion is **GRANTED** as to Plaintiff’s request for injunctive relief since it is moot;
- d. Defendants’ motion is **DENIED** as to Plaintiff’s claims against them for violation of the Eighth Amendment in their individual capacities upon which Plaintiff may proceed;
 - (1) Defendants K. Holland, J. Gutierrez, and G. Ybarra **SHALL** file an answer to these claims **within 21 days** of the date of service of this order; and
- e. Defendants’ motion is **GRANTED** as to Plaintiff’s claims against the individuals identified as “Unnamed Correctional Officers” since Plaintiff’s allegations do not establish their personal involvement or the requisite causal link for a cognizable claim.

IT IS SO ORDERED.

Dated: June 1, 2017

/s/ Lawrence J. O’Neill
UNITED STATES CHIEF DISTRICT JUDGE