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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JARED M. VILLERY,

Plaintiff,

v.

JEFFREY BEARD, et al.,

Defendants

Case No. 1:15-cv-00987-DAD-BAM (PC)

ORDER FINDING SERVICE OF COMPLAINT APPROPRIATE, AND FORWARDING SERVICE DOCUMENTS TO PLAINTIFF FOR COMPLETION AND RETURN WITHIN THIRTY DAYS

FINDINGS AND RECOMMENDATIONS THAT CERTAIN DEFENDANTS BE DISMISSED FOR PLAINTIFF’S FAILURE TO STATE A CLAIM (ECF No. 22)

THIRTY (30) DAY DEADLINE

Plaintiff Jared M. Villery (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 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.

Plaintiff’s first amended complaint, filed on June 16, 2016, is currently before the Court for screening. (ECF No. 22.)

I. Procedural History

Plaintiff filed this action on June 29, 2015. (ECF No. 1.) On July 8, 2015, the then-assigned Magistrate Judge screened Plaintiff’s original complaint and found that Plaintiff failed to state a cognizable claim for relief. (ECF No. 7.) Plaintiff filed a motion for reconsideration of the

1 screening order. (ECF No. 10.) While that motion was pending, the then-assigned Magistrate Judge
2 retired from the bench, and the undersigned was assigned to this matter.

3 On September 2, 2015, the then-assigned District Judge granted Plaintiff’s motion for
4 reconsideration in part. The Court’s July 8, 2015 screening order and certain other proceedings
5 were vacated, and the matter was referred to the undersigned for further proceedings. Shortly
6 thereafter, the currently-assigned District Judge was appointed, and this matter was re-assigned to
7 him. (ECF No. 12.)

8 Following the resolution of several motions, on April 8, 2016, the Court issued a screening
9 order finding certain claims in Plaintiff’s original complaint cognizable, and ordering Plaintiff to
10 either file an amended complaint, or notify the Court of his willingness to proceed only on the
11 cognizable claims. (ECF No. 19). Plaintiff then moved for an extension of time to amend his
12 complaint (ECF No. 20), which was granted, (ECF No. 21.)

13 Plaintiff’s first amended complaint is now before the court.

14 **II. Screening Requirement**

15 The Court is required to screen complaints brought by prisoners seeking relief against a
16 governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C. §
17 1915A(a). Plaintiff’s complaint, or any portion thereof, is subject to dismissal if it is frivolous or
18 malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary relief
19 from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2); 28 U.S.C. §
20 1915(e)(2)(B)(ii).

21 A complaint must contain “a short and plain statement of the claim showing that the pleader
22 is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but
23 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,
24 do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949 (2009) (citing Bell
25 Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 1964-65 (2007)). While a
26 plaintiff’s allegations are taken as true, courts “are not required to indulge unwarranted inferences.”
27 Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and
28 citation omitted).

1 Prisoners proceeding pro se in civil rights actions are entitled to have their pleadings
2 liberally construed and to have any doubt resolved in their favor. Hebbe v. Pliler, 627 F.3d 338, 342
3 (9th Cir. 2010) (citations omitted). To survive screening, Plaintiff’s claims must be facially
4 plausible, which requires sufficient factual detail to allow the Court to reasonably infer that each
5 named defendant is liable for the misconduct alleged, Iqbal, 556 U.S. at 678, 129 S. Ct. at 1949
6 (quotation marks omitted); Moss v. United States Secret Service, 572 F.3d 962, 969 (9th Cir. 2009).
7 The sheer possibility that a defendant acted unlawfully is not sufficient, and mere consistency with
8 liability falls short of satisfying the plausibility standard. Iqbal, 556 U.S. at 678, 129 S. Ct. at 1949
9 (quotation marks omitted); Moss, 572 F.3d at 969.

10 **III. Plaintiff’s Allegations**

11 Plaintiff is currently housed at the California Substance Abuse Treatment Facility
12 (“CSATF”) in Corcoran, California. However, the alleged events took place at California State
13 Prison-Los Angeles County (“LAC”) in Lancaster, California; the California Correctional
14 Institution (“CCI”) in Tehachapi, California¹; and at CSATF.

15 Plaintiff names as defendants former CDCR secretary Jeffery Beard and current secretary of
16 CDCR Scott Kernan.

17 Plaintiff further names as defendants the following individuals employed at LAC: Senior
18 Psychologist Dr. Richard Kendall, and Staff Psychologist Dr. K. Acosta.

19 Plaintiff also names as defendants the following individuals employed at CCI: Facility
20 Captain Jay Jones; Psychiatrist Dr. Majid Naficy; Correctional Counselor II. Alicia Guerrero;
21 Psychologist Dr. A. Aithal; Psychologist Dr. Jennifer Seymour; Clinical Social Worker A.
22 Carrizales; and Correctional Counselor I J. Woodard.

23 Finally, Plaintiff names as defendants the following individuals employed at CSATF:
24 Captain M. Pallares; Correctional Counselor II Michael Fisher; Correctional Counselor I S.
25 Hernandez; Correctional Counselor I A. Miranda; and Psychologist Dr. A. Grimmig.

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28 ¹ In the order granting in part Plaintiff’s motion for reconsideration, the District Court held that the claims arising at CSP Lancaster are substantially related to those from CCI and SATF. The CSP Lancaster claims are therefore before the Court.

1 **Background Allegations**

2 Plaintiff is an individual of mixed race heritage, with an African American father and a
3 Caucasian mother. However, Plaintiff’s heritage is not readily apparent from his appearance, as he
4 appears to be only white. For their own safety, inmates are forced to only associate with inmates of
5 their own race. Upon incarceration Plaintiff associated with black inmates due to the fact that white
6 inmates will not associate with inmates of mixed race. CDCR classified Plaintiff as white. This
7 classification; the extremely violent nature of the general population; Plaintiff’s appearance; and
8 Plaintiff’s association with black inmates all lead to a high exposure to excessive levels of violence
9 during the first four years of his incarceration.

10 Plaintiff was placed in custody of the Los Angeles County Sheriff’s Department at the Twin
11 Towers Correctional Facility (“TTCF”) in Los, Angeles, California, until July 19, 2005. On
12 September 25, 2005 Plaintiff was transferred to Kern Valley State Prison (“KVSP”). At both
13 institutions Plaintiff suffered through numerous fights, assaults, and riots. Plaintiff also witnessed
14 several acts of violence include stabbings, at least one murder, and the results of numerous suicides.
15 Plaintiff alleges that broken bones and bloodshed were common spectacles.

16 Plaintiff stayed at KVSP until August 3, 2007, when two white inmates attempted to kill
17 him. Plaintiff was attacked with an inmate manufactured knife, stabbed once in the back a quarter
18 of an inch to the left of his spine, and repeatedly punched and kicked in the head and torso by these
19 inmates. After this incident Plaintiff was diagnosed with Post Traumatic Stress Disorder (“PTSD”).
20 Due to the symptoms of this disorder, Plaintiff was housed alone in a cell for over seven months for
21 his safety and the safety of other inmates. During this time he stayed in Administrative Segregation
22 (“Ad Seg.”), and Plaintiff was reclassified into the Sensitive Needs Program (“SNY”) because his
23 racial classification prevented him from safely remaining in the general population.

24 Plaintiff continues to suffer from PTSD. Due to this disorder he suffers with symptoms such
25 as hypervigilance to sudden movements around him and other stimuli that often trigger flashbacks
26 and violent defensive reactions. Plaintiff also suffers from frequent nightmares about being
27 attacked, and other incidents of violence he has witnessed and experienced. The most dangerous
28 trigger of Plaintiff’s PTSD is being forced to live with and attempt to sleep around other inmates.

1 These conditions leave it virtually impossible for Plaintiff to sleep, and Plaintiff has suffered for
2 years with minimal sleep due to his symptoms. These conditions have forced Plaintiff to adopt
3 abnormal sleep patterns, where he is only able to sleep fully when his cellmate is not in the cell with
4 him. The longer Plaintiff goes without sleep, the worse his reactions get.

5 Despite the affect this lack of sleep has had on Plaintiff's condition over the last eight years,
6 custody and mental health staff has repeatedly refused to take any steps to house Plaintiff in single
7 cell occupancy. Plaintiff was released into the SNY program on March 6, 2008, and was involved
8 in two unreported cell fights within the week. On March 15, 2008, he was moved to a new cell
9 where he remained until October 8, 2009. During this time Plaintiff's reactions led to multiple
10 altercations between him and his cellmate. On October 8, 2009 he was transferred to LAC.

11 **LAC**

12 Over the course of two years Plaintiff went through a pattern of being housed with other
13 inmates until conflict arose, and then he was moved into a single cell for a period of no more than a
14 few months until being placed with another cellmate. During this time Plaintiff met with defendant
15 Acosta, a psychologist, on three different occasions on August 2, 2013; August 13, 2013; and
16 August 30, 2013. During these meetings Plaintiff stressed his anxiety and the violent reactions he'd
17 had toward former cellmates. Plaintiff explained the way in which these reactions made him fear
18 that he would injure himself or someone else. However, Acosta refused to recommend single celled
19 housing.

20 On September 25, 2013, Acosta informed Plaintiff that defendant Kendall, the senior
21 psychologist at the time at LAC, had forwarded an e-mail to all mental health staff at LAC
22 instructing them to refrain from making any single cell housing recommendations. Acosta stated
23 that this policy was being dictated by custody staff, and that CDCR was putting pressure on mental
24 health staff due to overcrowding.

25 On October 3, 2013, when Plaintiff was forced to move in with another inmate, he was
26 involved in a confrontation with his new cellmate when the cellmate walked into the cell behind
27 Plaintiff without forewarning. Plaintiff advanced on the man, but the inmate hastily exited the cell
28 and refused to return. Plaintiff then met with Acosta for the final time, pleading for help to obtain

1 single cell housing, but she again refused. Plaintiff was moved back to a cell by himself later that
2 day due to Plaintiff's new cellmate's fear of living with him.

3 On December 6, 2013, Plaintiff was seen by defendant Kendall because Acosta was out sick.
4 Plaintiff confronted Kendall about the single cell e-mail, and Plaintiff told Kendall he was
5 endangering inmates by disregarding their needs. Plaintiff also explained his own need for single
6 cell status. However, Kendall stated that no single cell recommendations would be made by mental
7 health staff at LAC.

8 During this two year period, Plaintiff was forced to live with several other inmates
9 including, but not limited to: Brent Walkins, Charlie O'Conner, inmate Jones, Da'Saun Roberts,
10 inmate Martin, and inmate Miranda. All of these housing arrangements followed the same pattern
11 of depriving Plaintiff of sleep, altercations, and ultimately having Plaintiff housed in a single cell
12 for a short period of time.

13 CCI

14 Plaintiff was transferred to CCI on January 14 or 15, 2014. Due to the deterioration of
15 Plaintiff's condition, on January 16, 2014, Plaintiff immediately notified defendant Carrizales at
16 California Correction Institution ("CCI") about his symptoms and problems with other inmates.
17 Plaintiff spoke with Carrizales again on three separate occasions, not including the first, where
18 Plaintiff repeatedly described his problems and need for single cell housing. However, Carrizales
19 refused to make any housing recommendations for Plaintiff, stating that custody staff had instructed
20 mental health staff to refrain from doing so based on overcrowding.

21 Plaintiff also discussed his problems at length with defendant Naficy, a psychiatrist, on
22 January 22, 2014; January 29, 2014; February 11, 2014; April 29, 2014; and July 8, 2014, but
23 Naficy simply reiterated that mental health staff would not do anything. Plaintiff had to speak with
24 defendant Captain Jones due to Plaintiff explaining his need for single cell housing to Carrizales on
25 January 21, 2014. At this time Jones stated that mental health staff "doesn't make housing
26 recommendations on my facility." Jones then threatened Plaintiff with disciplinary action if he
27 continued to speak with mental health staff about his need to live alone.

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1 On January 29, 2014, and January 30, 2014, Plaintiff spoke with defendant Aithal, a
2 psychologist at CCI, describing in detail how his condition was affected by living with other
3 inmates and the violent problems it caused. However, Aithal restated the same line that mental
4 health staffs at CCI were not allowed to make housing recommendations because it conflicted with
5 the will of custody staff to keep as many beds full as possible. On January 29, 2014, Plaintiff
6 attended his first CCI classification hearing held by defendants Jones, Gurrero, and Woodard. He
7 explained all of the problems and violence he'd experienced living with other inmates due to his
8 PTSD, and explained his need to be housed alone. These defendants disregarded his concerns,
9 refused to investigate his claims, and denied him single cell housing.

10 Due to Plaintiff's symptoms worsening, his counselor submitted a mental health referral for
11 him, leading to an interview with defendant Seymour on July 25, 2015. Plaintiff reiterated the
12 numerous problems he was having due to his PTSD, and stated that he needed to be housed alone
13 due to these problems. Defendant Seymour also stated that mental health staff would not make any
14 housing recommendations.

15 **CSATF**

16 On January 9, 2015, Plaintiff was transferred to CSATF directly from CCI's Ad Seg. From
17 this day forward Plaintiff was housed with several other inmates including: Arturo Palomo, Randy
18 Gilbertson, inmate Esparaza, inmate Wilson, Nicolas Morales, Shane hall, Angelo Morales, and
19 Samir Sweis. The same pattern of incidents that lead to confrontations and ultimately Plaintiff
20 being housed alone until a new cell mate was provided for him continued. During these months
21 Plaintiff's symptoms worsened.

22 On November 28, 2015, inmate Samir Sweis was moved in with Plaintiff and in the
23 following weeks Plaintiff's condition was severely worsened due to lack of sleep because of Sweis'
24 choice not to leave the cell. On the afternoon of December 15, 2015, Plaintiff was severely sleep
25 deprived, this caused him to be anxious and on edge. At approximately 3:10 p.m., while Sweis was
26 out of the cell, Plaintiff entered the cell, leaving the door open a crack with the intention of going
27 back out to use the shower. As he was looking through papers with his back to the cell door, an
28 inmate named Robinson suddenly bumped into the door and it began to slide open. Thinking

1 Robinson was a threat, Plaintiff rushed the door, coming upon Robinson standing there speaking to
2 another inmate. Plaintiff shoved Robinson out of the doorway and said “get the fuck away from my
3 cell.” Robinson responded by hitting him in the face. Plaintiff hit Robinson three to four times
4 before Robinson tackled him in the cell. As they both fell Plaintiff’s foot was pinned, and
5 Plaintiff’s ankle snapped. After more blows were exchanged on the ground, Robinson saw that
6 Plaintiff’s ankle was badly broken, causing him to hurry out of the cell.

7 Plaintiff suffered a softball sized contusion on his right forehead, one on the right side of his
8 back, the ends of his right tibia and fibula were broke, and he suffered a spiral fracture to his right
9 fibula. Plaintiff required two surgeries to fix his broken bones, having to have an eight-inch metal
10 plate and three long screw inserted into his leg. Since his injuries, Plaintiff has been housed alone,
11 but he faces imminent transfer to dormitory housing.

12 Shortly after coming to CSATF, Plaintiff went to great lengths to communicate his concerns
13 about living with another inmate. On January 16, 2015, Plaintiff was interviewed by defendant
14 Hernandez in preparation for Plaintiff’s initial hearing. After informing Hernandez of the numerous
15 problems Plaintiff had suffered due to his condition and being forced to live with other inmates,
16 Hernandez spoke to defendant Fisher. After this conversation, Hernandez told Plaintiff that Fisher
17 would not authorize single cell status. On January 22, 2015, Plaintiff had his first classification
18 hearing at CSATF, this hearing was held by defendants Pallares and Hernandez. After reiterating
19 his problems Plaintiff was again denied single cell status.

20 Plaintiff met with Fisher to discuss his request for single cells status due to his PTSD on
21 January 28, 2015; April 16, 2015; June 3, 2015; and June 15, 2015. All interactions with Fisher
22 resulted in the same denial of request for housing despite declarations from former cellmates in
23 regards to the confrontations that occurred when they lived with Plaintiff, and Plaintiff’s own
24 recitation of his ongoing problems. After providing Plaintiff’s counselor, defendant Miranda, with
25 a written request for single cell status in which he provided declarations from eight former cellmates
26 and a copy of this Court’s September 1, 2015 order issued in the instant action. Miranda spoke with
27 Fisher for approximately fifteen minutes, at which point Fisher came to Miranda’s office where
28 Miranda provided Fisher with the paperwork. At this time Fisher stated that he didn’t care what

1 paperwork Plaintiff provided because he was never going to get single cell status no matter what
2 cellmates he had problems with. Fisher then directed Miranda to clear Plaintiff for dormitory
3 housing, stating that Plaintiff's mental health problems were not his concern.

4 Plaintiff was denied single cell housing at multiple classification hearings. Plaintiff suffered
5 numerous fractures and other injuries as a result of an in-cell altercation directly caused by
6 Plaintiff's declining condition. Aside from seeking help from custody, Plaintiff spoke with multiple
7 mental health staff on numerous occasions shortly after transferring to CSATF.

8 One mental health staff member, Grimmig, met with Plaintiff multiple times and Grimmig
9 reiterated to Plaintiff that mental health staff could not make housing recommendations due to
10 custody staffs' instruction not to, due to overcrowding. The indifference towards Plaintiff by
11 Grimmig eventually turned into hostility. On January 13, 2016, shortly after Plaintiff returned from
12 the hospital after the first surgery to repair his leg Plaintiff approached Grimmig again for single
13 status. Grimmig told Plaintiff that prison was a violent place, and that Plaintiff would have to
14 accept it and deal with in, because she was never going to recommend single cell housing for him.

15 It wasn't until after pursuing medical grievances seeking mental health treatment following
16 his injuries that Plaintiff was assigned a new clinical caseworker who placed him on temporary
17 single cell status. However, these actions have been met with hostility from custody staffs, who still
18 refuse to place Plaintiff on long-term single cell status, and who remain active in their attempts to
19 have the temporary status removed. This designation is only temporary, and because of the pressure
20 from Fisher to remove it, Plaintiff's caseworker has informed him that within a matter of weeks the
21 temporary placement will be removed and Plaintiff will be placed in dormitory housing.

22 Defendants' have all been clearly made aware of the fact that being housed with other
23 inmates is the direct cause of the degeneration of Plaintiff's condition, and that this housing places
24 Plaintiff at risk of irreparable injury due to Plaintiff's aggressive reactions to those around him.
25 However, defendants still house Plaintiff with other inmates, and refuse his requests for single cell
26 status. Defendants have acted with deliberate indifference towards Plaintiff's mental and physical
27 needs, and have placed him in conditions that are hazardous to his safety all of which violate his
28 Eighth Amendment right to be free from cruel and unusual punishment. Furthermore, the policy put

1 in place by custody staffs that instruct mental health to deny single cell housing due to
2 overcrowding violates Plaintiff's rights to non-hazardous living conditions.

3 Defendant Beard, as the former secretary of CDCR, and defendant Kernan as the current
4 secretary, were and are responsible for the promulgation of all rules, policies, and regulations which
5 govern the behavior of all CDCR employees. By implementing policies such as pressuring mental
6 health staff not to recommend single cell housing due to overcrowding both defendants have
7 violated Plaintiff's Eighth Amendment right to adequate mental health care and living conditions.

8 Plaintiff seeks injunctive relief, compensatory damages, punitive damages, appointment of
9 counsel, reasonable attorney's fees, costs of suit, and any further relief the court deems appropriate.

10 **IV. Discussion**

11 **a. Eighth Amendment**

12 Plaintiff states that he brings a claim for violation of his right to mental health care and to
13 living conditions that are not cruel and unusual, under the Eighth Amendment. Plaintiff alleges that
14 he brings a claim based on Defendants' conduct as well as policies which have caused him harm.

15 The Eighth Amendment protects prisoners from inhumane methods of punishment and from
16 inhumane conditions of confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir. 2005).
17 Prison officials must provide prisoners with medical care and personal safety and must take
18 reasonable measures to guarantee the safety of the inmates. Farmer v. Brennan, 511 U.S. 825, 832-
19 33, 114 S. Ct. at 1976 (1994) (internal citations and quotations omitted). Prison officials have a duty
20 under the Eighth Amendment to protect prisoners from violence at the hands of other prisoners
21 because being violently assaulted in prison is simply not part of the penalty that criminal offenders
22 pay for their offenses against society. Farmer, 511 U.S. at 833-34 (quotation marks omitted); Clem
23 v. Lomeli, 566 F.3d 1177, 1181 (9th Cir. 2009); Hearns v. Terhune, 413 F.3d 1036, 1040 (9th Cir.
24 2005).

25 However, prison officials are liable under the Eighth Amendment only if they demonstrate
26 deliberate indifference to conditions posing a substantial risk of serious harm to an inmate; and it is
27 well settled that deliberate indifference occurs when an official acted or failed to act despite his
28 knowledge of a substantial risk of serious harm. Farmer, 511 U.S. at 834, 841 (quotations omitted);

1 Clem, 566 F.3d at 1181; Hearns, 413 F.3d at 1040. Where the failure to protect is alleged, the
2 defendant must knowingly fail to protect plaintiff from a serious risk of conditions of confinement
3 where defendant had reasonable opportunity to intervene. Orwat v. Maloney, 360 F.Supp.2d 146,
4 155 (D. Mass. 2005), citing Gaudreault v. Municipality of Salem, 923 F.2d 203, 207 n.3 (1st Cir.
5 1991); see also Borello v. Allison, 446 F.3d 742, 749 (7th Cir. 2006) (defendant’s deliberate
6 indifference must effectively condone the attack by allowing it to happen); accord, Farmer, 511
7 U.S. at 833-834 (if deliberate indifference by prison officials effectively condones the attack by
8 allowing it to happen, those officials can be held liable to the injured victim). “Whether a prison
9 official had the requisite knowledge of a substantial risk is a question of fact subject to
10 demonstrating in the usual ways, including inference from circumstantial evidence, and a factfinder
11 may conclude that a prison official knew of a substantial risk from the very fact that the risk was
12 obvious.” Farmer, 511 U.S. at 842.

13 In the order granting Plaintiff’s motion for reconsideration, the District Judge held that
14 Plaintiff stated a cognizable claim in his original complaint for deliberate indifference to his serious
15 medical needs in violation of the Eighth Amendment by sufficiently alleging his need for single cell
16 status due to his PTSD, and the subsequent potential for serious harm to himself or his cellmates.
17 (ECF No. 12, pp. 4-6); see also Estelle v. Gamble, 429 U.S. 97, 104 (1976); Doty v. County of
18 Lassen, 378 F.3d 540, 546 (9th Cir. 1994). Plaintiff therefore states a claim for relief against those
19 defendants whom he sufficiently alleges knew about his PTSD and refused to authorize his single
20 cell status.

21 Plaintiff names sixteen individual defendants in this action. The Civil Rights Act provides
22 for liability for state actors that cause “the deprivation of any rights, privileges, or immunities
23 secured by the Constitution.” 42 U.S.C. § 1983. The statute plainly requires that there be an actual
24 connection or link between the actions of the defendants, and the deprivation alleged to have been
25 suffered by the plaintiff. See Monell v. Dept. of Social Servs., 436 U.S. 658 (1978); Rizo v. Goode,
26 423 U.S. 362 (1976). The Ninth Circuit has held that “[a] person ‘subjects’ another to the
27 deprivation of a constitutional right, within the meaning of section 1983, if he does an affirmative
28 act, participates in another’s affirmative acts, or omits to perform an act which he is legally required

1 to do that causes the deprivation of which complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743
2 (9th Cir. 1978). Plaintiff may not hold all of the defendants liable by simply alleging that he was
3 denied single cell status. Plaintiff must allege facts, liberally construed, indicating that each
4 defendant knew of Plaintiff’s condition and was deliberately indifferent to it.

5 Analyzing Plaintiff’s allegations summarized above under these standards, the Court finds
6 that Plaintiff has sufficiently alleged that Defendants Kendall (supra 6:3-7), Acosta (supra 5:12-24),
7 Naficy (supra 6:21-27), Jones (supra 6:23-27), Guerrero (supra 7:5-9), Aithal (supra 7:1-5),
8 Seymour (supra 7:10-14), Carrizales (supra 6:14-20), Woodard (supra 6:20-21), Pallares (supra
9 8:17-19), Hernandez (supra 8:12-19), Fisher (supra 8:12-9:3), Grimmig (supra 9:8-14), and Miranda
10 (supra 8:24-9:3) were aware of Plaintiff’s PTSD and need for single cell housing, and denied
11 Plaintiff’s numerous requests. Plaintiff has therefore stated a cognizable claim for relief against
12 these defendants under the Eighth Amendment.

13 **b. Unconstitutional Policy**

14 In the order granting in part the motion for reconsideration, the District Judge also held that
15 Plaintiff had alleged facts sufficient to support a claim that a policy was in place that denied single
16 cell housing for inmates with serious mental disorders. (ECF No. 12, pp. 7-8.) His allegations in his
17 amended complaint are substantially similar to the ones found cognizable by the District Judge in
18 the original complaint. Further, in his amended complaint, Plaintiff specifically alleges that
19 Defendant Beard and Kernan, as the former and current secretaries of CDCR, are “responsible for
20 the promulgation of all rules, policies, and regulations which govern the behavior of all CDCR
21 employees.” (Compl. ¶100.) Plaintiff has therefore stated a cognizable claim for relief against
22 Defendants Beard and Kernan for promulgating an unconstitutional policy.

23 **c. Appointment of Counsel**

24 In his prayer for relief, Plaintiff has requested the appointment of counsel to assist him in
25 pursuing his claims.

26 “There is no constitutional right to appointed counsel in a section 1983 action.” Storseth v.
27 Spellman, 654 F.2d 1349, 1353 (9th Cir. 1981); Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir.
28 1997), withdrawn in part on other grounds, 154 F.3d 952 n.1 (9th Cir. 1998). The Court cannot

1 Plaintiff did not attempt to re-plead any claims against the following previously-named
2 defendants: CDCR, J. Lewis, R. L. Briggs, K. Z. Allen, Oleg Lifyandsky, C. Cornell, Psy. D.,
3 Barbara Zager, Kimberly Holland, R. A Groves, and C. Schuyler. Accordingly, the Court will
4 recommend that these defendants be dismissed from this action for the failure to state a claim upon
5 which relief may be granted.

6 Based on the foregoing, it is HEREBY ORDERED that:

- 7 1. Plaintiff's request for the appointment of counsel is denied, without prejudice;
- 8 2. Service is appropriate for the following defendants:

9 **Jeffery Beard, former Secretary of CDCR**

10 **Scott Kernan, Secretary of CDCR**

11 **Dr. Richard Kendall, Senior Psychologist for LAC**

12 **Dr. K. Acosta, Staff Psychologist for LAC**

13 **Jay Jones, Facility Captain at CCI**

14 **Dr. Majid Naficy, Psychiatrist at CCI**

15 **Alicia Guerrero, Correctional Counselor II at CCI**

16 **Dr. A. Aithal, Psychologist at CCI**

17 **Dr. Jennifer Seymour, Psychologist at CCI**

18 **A. Carrizales, Clinical Social Worker at CCI**

19 **J. Woodard, Correctional Counselor I at CCI**

20 **M. Pallares, Facility Captain at CSATF**

21 **Michael Fisher, Correctional Counselor II at CSATF**

22 **S. Hernandez, Correctional Counselor I at CSATF**

23 **A. Miranda, Correctional Counselor I at CSATF**

24 **Dr. A. Grimmig, Psychologist at CSATF**

25 3. The Clerk of Court shall send to Plaintiff sixteen (16) USM-285 forms, sixteen (16)
26 summonses, a Notice of Submission of Documents form, an instruction sheet, and a copy of the first
27 amended complaint, filed June 16, 2016 (ECF No. 22);

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Plaintiff is advised that failure to file objections within the specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.2d F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: July 5, 2017

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE