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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOSEPH BECKER,
Plaintiff,
v.
WARDEN SHERMAN, et al.,
Defendants.

CASE No. 1:16-cv-0828 AWI MJS (PC)
**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS TO GRANT IN
PART DEFENDANTS' MOTION TO
DISMISS**
(ECF NOS. 39, 51)
FOURTEEN-DAY DEADLINE

Plaintiff is a state prisoner proceeding with appointed counsel in a civil rights action pursuant to 42 U.S.C. § 1983. 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 December 11, 2017, the Magistrate Judge filed findings and recommendations herein which were served on the parties and which contained notice that any objections to the findings and recommendations were to be filed within fourteen days. (ECF No. 51.) The parties have filed objections. Plaintiff objects to the Magistrate Judge's conclusions that the claims against Wardens Sherman and Martinez were inadequately pled. This Court agrees with the conclusion of the Magistrate Judge. Defendants take issue with the Magistrate Judge's conclusion that placement in a single cell on a

1 temporary—rather than permanent—basis could support a claim for deliberate
2 indifference against an official in his or her official capacity under the Eighth Amendment.
3 Defendants rely on sections of the California Code of Regulations for the proposition that
4 housing designations are all temporary and must be reviewed at least annually.
5 Defendants answer is not dispositive of the Constitutional question identified by the
6 Magistrate Judge. It does not warrant departure from the recommendation of the
7 Magistrate Judge.

8 The Court has reviewed the file and finds the findings and recommendations to be
9 supported by the record and by the Magistrate Judge’s analysis. Accordingly, IT IS
10 HEREBY ORDERED that:

11 1. The findings and recommendations filed December 11, 2017 (ECF No. 51),
12 are ADOPTED IN FULL;

13 2. The Defendants’ August 25, 2017, Motion to Dismiss (ECF No. 39) is
14 GRANTED IN PART as follows: Plaintiff’s Eighth Amendment failure to protect claim
15 against CSATF Warden Sherman and SCC Warden Martinez is dismissed for failure to
16 state a claim. The motion is denied in all other respects; and

17 4. Plaintiff is granted fourteen days from the date of this order in which to file an
18 amended complaint. If an amended complaint is not filed within that time, the remaining
19 Defendants who have not yet filed an answer will be directed to do so.

20 IT IS SO ORDERED.

21 Dated: January 29, 2018

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23 SENIOR DISTRICT JUDGE