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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 EDWARD B. SPENCER,

12 Plaintiff,

13 vs.

14 STUART SHERMAN,

15 Defendant.
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1:17-cv-00479-AWI-GSA-PC

**FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS ACTION
PROCEED ONLY AGAINST DEFENDANT
STUART SHERMAN, ON PLAINTIFF'S
EIGHTH AMENDMENT CONDITIONS OF
CONFINEMENT CLAIM, AND THAT ALL
OTHER CLAIMS BE DISMISSED**

OBJECTIONS, IF ANY, DUE IN 14 DAYS

18 Edward B. Spencer (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma*
19 *pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. On April 4, 2017, Plaintiff
20 filed the Complaint commencing this action, which is now before the court for screening.
21 (ECF No. 1.) The Complaint names defendant Stuart Sherman (Warden of SATF), and alleges
22 claims for adverse conditions of confinement under the Eighth Amendment, violation of health
23 and sanitation standards, and the California Constitution.

24 The court screened Plaintiff’s Complaint pursuant to 28 U.S.C. § 1915A and found that
25 it states a cognizable conditions of confinement claim under § 1983 against defendant Stuart
26 Sherman, but no other claims. (ECF No. 11.) On April 6, 2018, Plaintiff was granted leave to
27 either file an amended complaint or notify the court that he is willing to proceed only on the
28 claim found cognizable by the court. (*Id.*) On April 23, 2018, Plaintiff filed a notice informing

1 the court that he is willing to proceed only on the cognizable Eighth Amendment conditions of
2 confinement claim against defendant Sherman. (ECF No. 12.)

3 Based on the foregoing, it is **HEREBY RECOMMENDED** that:

- 4 1. This action proceed only against defendant Stuart Sherman on Plaintiff's claim
5 for adverse conditions of confinement under the Eighth Amendment;
- 6 2. All remaining claims be dismissed from this action;
- 7 3. Plaintiff's state law claims for violation of health and sanitation standards and
8 violation of the California Constitution be dismissed from this action based on
9 Plaintiff's failure to state any claims upon which relief may be granted; and
- 10 4. This case be referred back to the Magistrate Judge for further proceedings,
11 including initiation of service of process.

12 These Findings and Recommendations will be submitted to the United States District
13 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
14 fourteen (14) days after being served with these Findings and Recommendations, Plaintiff may
15 file written objections with the Court. The document should be captioned "Objections to
16 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
17 objections within the specified time may waive the right to appeal the District Court's order.
18 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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20 IT IS SO ORDERED.

21 Dated: April 25, 2018

/s/ Gary S. Austin
22 UNITED STATES MAGISTRATE JUDGE
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