

1 by proper analysis.

2 In his complaint, plaintiff alleges that defendants subjected him to excessive noise
3 resulting in sleep deprivation, thus implicating conditions of his confinement, in violation of the
4 Eighth Amendment. (*See* Doc. No. 28 at 3.) In their objections to the findings and
5 recommendations, defendants argue that the magistrate judge erred in denying qualified immunity
6 by defining the right in question in a highly generalized manner. (Doc. No. 29 at 2.) Defendants
7 argue that for the right to be clearly established, plaintiff must “identify a case where a prison
8 official acting under *similar circumstances* as each Defendant was held to have violated the
9 Eighth Amendment.” (*Id.* at 3.)

10 “A government official’s conduct violate[s] clearly established law when, at the time of
11 the challenged conduct, ‘[t]he contours of [a] right [are] sufficiently clear’ that every ‘reasonable
12 official would have understood that what he is doing violates that right.’” *Ashcroft v. al-Kidd*,
13 563 U.S. 731, 741 ((2011) (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987))). In this
14 regard, “existing precedent must have placed the statutory or constitutional question beyond
15 debate.” *Id.*; *see also* *Clement v. Gomez*, 298 F.3d 898, 906 (9th Cir. 2002) (quoting *Saucier*, 533
16 U.S. at 202). The inquiry must be undertaken in light of the specific context of the particular
17 case. *Saucier*, 533 U.S. at 201.

18 As indicated by the findings and recommendations, the Ninth Circuit has concluded that
19 conditions of confinement involving excessive noise that result in sleep deprivation for inmates
20 may violate the Eighth Amendment. *See Jones v. Neven*, 399 F. App’x 203, 205 (9th Cir. 2010)
21 (finding that Eighth Amendment rights to be free from excessive noise was clearly established
22 and therefore, defendants were not entitled to qualified immunity); *Keenan v. Hall*, 83 F.3d 1083,
23 1090 (9th Cir. 1996), *opinion amended on denial of reh’g*, 135 F.3d 1318 (9th Cir. 1998) (stating
24 that inmates have an Eighth Amendment right to be housed in an environment that is reasonably
25 free of excess noise).

26 If defendants subjected plaintiff to excessive noise beyond what was necessary for a
27 legitimate penological purpose, it is doubtful in the undersigned’s view that they could
28 successfully avail themselves of the shield of qualified immunity. *See Ashcroft v. al-Kidd*, 563

1 U.S. 731, 741 (2011) (“We do not require a case directly on point, but existing precedent must
2 have placed the statutory or constitutional question beyond debate.”); *Hope v. Pelzer*, 536 U.S.
3 730, 741 (2002) (“Officials can still be on notice that their conduct violates established law even
4 in novel factual circumstances.”); *Hamby v. Hammond*, 821 F.3d 1085, 1095 (9th Cir. 2016)
5 (“[A] plaintiff need not find a case with identical facts in order to survive a defense of qualified
6 immunity.”); *Serrano v. Francis*, 345 F.3d 1071, 1076–77 (9th Cir. 2003).

7 While it may emerge through the course of these proceedings that one or more of
8 plaintiff’s allegations are not supported by the evidence, the allegations of his complaint provide a
9 sufficient basis upon which to deny the invocation of qualified immunity at this early stage of
10 these proceedings. *See Keates v. Koile*, 883 F.3d 1228, 1240 (9th Cir. 2018) (“Our denial of
11 qualified immunity at this stage of the proceedings does not mean that this case must go to trial”
12 because “[o]nce an evidentiary record has been developed through discovery, defendants will be
13 free to move for summary judgment based on qualified immunity.”) (quoting *O’Brien v. Welty*,
14 818 F.3d 920, 936 (9th Cir. 2016)). Defendants’ motion to dismiss on qualified immunity
15 grounds is therefore properly denied.

16 Accordingly,

- 17 1. The findings and recommendations issued September 6, 2018, are adopted;
- 18 2. Defendants’ motion to dismiss the action is denied; and
- 19 3. The matter is referred back to the magistrate judge for further proceedings.

20 IT IS SO ORDERED.

21 Dated: December 4, 2018

22 
23 _____
24 UNITED STATES DISTRICT JUDGE
25
26
27
28