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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RODOLFO MARTINEZ,  
Plaintiff,  
v.  
SHERMAN,  
Defendant.

No. 1:21-cv-01319-ADA-BAM (PC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS RECOMMENDING  
DISMISSAL OF ACTION

(Doc. No. 15)

Plaintiff Rodolfo Martinez (“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 action proceeds on Plaintiff’s first amended complaint against Defendant Stuart Sherman (“Defendant”) for deliberate indifference to Plaintiff’s conditions of confinement. (Doc. No. 10.)

On January 13, 2022, the assigned magistrate judge screened Plaintiff’s first amended complaint and issued findings and recommendations that this action be dismissed, with prejudice for failure to state a cognizable claim upon which relief may be granted. (Doc. No. 15.) On January 26, 2022, Plaintiff timely filed objections to the findings and recommendations. (Doc. No. 16.)

As Plaintiff’s objections largely reiterate the arguments raised in his first amended complaint, the court finds no basis to overturn the findings and recommendations. In Plaintiff’s

1 objections, Plaintiff cited to *Jett v. Penner*, 439 F.3d 1091 (9th Cir. 2006), to support that he  
2 stated a facially plausible claim for deliberate indifference to conditions of confinement against  
3 Defendant. However, *Jett* is distinguishable from Plaintiff's case in two important respects.  
4 Firstly, the court in *Jett* reviewed a district court's summary judgment ruling. (*Id.* at 1096.)  
5 Here, the court is screening Plaintiff's complaint to determine whether he failed to state a claim  
6 upon which relief may be granted. (Doc. No. 15.) A motion to dismiss for failure to state a claim  
7 is a unique procedural posture in comparison to a motion for summary judgment. (*Compare* Fed.  
8 R. Civ. P. 12(b)(6) *with* Fed. R. Civ. P. 56.) For example, a motion for summary judgment,  
9 unlike a motion to dismiss for failure to state a claim, does not assume the truthfulness of well-  
10 pleaded allegations in the complaint. (*See* Fed. R. Civ. P. 56.) Secondly, *Jett* concerned a  
11 deliberate indifference to serious medical needs claim. (*Jett*, 439 F.3d at 1096.) Such a claim is  
12 distinct from a deliberate indifference to conditions of confinement claim because a different test  
13 is applied for each type of claim. (*Compare id. with Farmer v. Brennan*, 551 U.S. 825, 834  
14 (1970).) Therefore, the court finds Plaintiff's objections unpersuasive to overturn the findings  
15 and recommendations.

16 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a  
17 *de novo* review of this case. Having carefully reviewed the entire file, including Plaintiff's  
18 objections, the court finds the findings and recommendations to be supported by the record and  
19 by proper analysis.

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Accordingly,

1. The findings and recommendations issued on January 13, 2022, (Doc. No. 15), are adopted in full;
2. This action is dismissed, with prejudice, for failure to state a cognizable claim upon which relief may be granted; and
3. The Clerk of the Court is directed to close this case.

IT IS SO ORDERED.

Dated: September 2, 2022

  
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UNITED STATES DISTRICT JUDGE