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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SAM JOHNSON, on behalf of himself and  
all others similarly situated,

Plaintiffs,<sup>1</sup>

v.

JENNIFER SHAFFER, et al.,

Defendants.

No. 2:12-cv-1059 KJM AC P

ORDER

Plaintiffs are a class of state prisoners represented by named plaintiff Sam Johnson proceeding through counsel with this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On December 3, 2014, the magistrate judge filed findings and recommendations, which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within twenty-one days. Defendants have filed objections to the findings and recommendations and plaintiffs have filed a reply to

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<sup>1</sup> The class in this action was certified by order filed March 31, 2014. ECF No. 44. The caption in this action is hereby amended accordingly.

1 defendants' objections. In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local  
2 Rule 304, this court has conducted a *de novo* review of this case.

3 Defendants' sole objection is to the magistrate judge's finding that plaintiffs' tenth  
4 claim is sufficiently pled as to the entire class. The challenge contained in the tenth claim is to  
5 alleged systemic tribunal bias caused by defendants' practice of "routinely overlook[ing] or  
6 discount[ing] errors and omissions contained in negative psychological evaluations [while]  
7 emphasiz[ing] errors and omissions found in otherwise positive psychological evaluations in  
8 order to discredit their conclusions." ECF No. 18 at 22. Citing *Wal-Mart Stores, Inc. v. Dukes*,  
9 \_\_\_ U.S. \_\_\_, 131 S. Ct. 2541, 2552 (2011) and *Ashcroft v. Iqbal*, \_\_\_ U.S. \_\_\_, 129 S. Ct. 1937,  
10 1949 (2009), defendants contend plaintiffs must "allege facts establishing significant proof of a  
11 general practice of bias" and that they have not done so. ECF No. 63. This objection is a  
12 variation on defendants' contention in opposition to plaintiffs' motion for class certification that  
13 plaintiffs had not satisfied the commonality requirement of Federal Rule of Civil Procedure  
14 23(a)(2). See ECF No. 40 at 16-17. That argument was considered and rejected by the court  
15 when it certified the class in this action. See ECF No. 44 (adopting in full ECF No. 40). It is  
16 equally without merit here.

17 In sum, having carefully reviewed the file, the court finds the findings and  
18 recommendations to be supported by the record and by proper analysis. They will be adopted in  
19 full.

20 On April 15, 2015, the parties filed a joint request to modify the pretrial  
21 scheduling order filed in this action and to set a case management conference for August 7, 2015,  
22 to reschedule this action if they have not reached a settlement agreement. Good cause appearing,  
23 the motion will be granted. The court will set a further scheduling conference for August 13,  
24 2015, which is the court's regular day for such conferences.

25 In accordance with the above, IT IS HEREBY ORDERED that:

26 1. The findings and recommendations filed December 3, 2014 (ECF No. 62), are  
27 adopted in full;

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1                   2. Defendants' motion for judgment on the pleadings (ECF No. 55) is granted as  
2 to Claims Four, Five, Nine and Twelve, and otherwise denied;

3                   3. Plaintiffs are granted 30 days from the date of this order to file an amended  
4 complaint alleging only the two remaining claims, or to file a statement that they will stand on the  
5 surviving claims of the current complaint as construed by the court;

6                   4. Defendants' motion to dismiss all defendants other than the Governor and the  
7 Executive Officer of the Board of Parole Hearings, is denied;

8                   5. The parties' joint request to modify the pretrial scheduling order and set a case  
9 management conference (ECF No. 66) is granted;

10                  6. The dates set in the pretrial scheduling order filed May 22, 2014 (ECF No. 51)  
11 are vacated; and

12                  7. This matter is set for further status conference on August 13, 2015 at 2:30 p.m.  
13 in Courtroom # 3.

14 DATED: May 14, 2015.

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17 UNITED STATES DISTRICT JUDGE