

1 F.2d 573, 574 (9th Cir. 1991). Here, petitioner specifically states that “[his] petition does not
2 concern [his] sentence or conviction;” rather, it concerns only “prison conditions” and his need
3 for “single cell status.” See ECF No. 1 at 1. Accordingly, it is recommended that the petition be
4 dismissed without prejudice to petitioner’s right to file a § 1983 civil rights complaint.

5 WARNING: Petitioner is informed that upon filing a § 1983 civil rights complaint, he will
6 be charged a \$350 filing fee. Petitioner is cautioned that this court has made no determination as
7 to the merits of his potential § 1983 claims and has made no findings as to whether his claims
8 would survive past the screening stage, should he elect to pursue a civil rights action.

9 Petitioner is further advised that prior to filing a § 1983 civil rights action, he must first
10 file an administrative grievance with the prison and complete the prison grievance process in
11 order to exhaust his administrative remedies as required by the Prison Litigation Reform Act. 42
12 U.S.C. § 1997(e)(a); McKinney v. Carey, 311 F.3d 1198 (9th Cir. 2002) (the PLRA requires that
13 administrative remedies be exhausted prior to filing suit). See also Woodford v. Ngo, 548 U.S.
14 81 (2006) (exhaustion requires that the prisoner complete the administrative review process in
15 accordance with all applicable procedural rules). Petitioner may then seek relief in federal court
16 by filing a § 1983 civil rights complaint.

17 Accordingly, IT IS HEREBY RECOMMENDED that:

- 18 1. Petitioner’s application for writ of habeas corpus (ECF No. 1) be dismissed without
19 prejudice to refiling it as a § 1983 civil rights action; and
- 20 2. The clerk of the court is directed to send petitioner a § 1983 civil rights complaint
21 form and the accompanying directions.

22 These findings and recommendations are submitted to the United States District Judge
23 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twentyone days
24 after being served with these findings and recommendations, plaintiff may file written objections
25 with the court. Such a document should be captioned “Objections to Magistrate Judge’s Findings

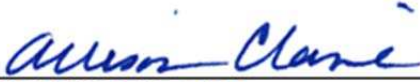
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1 and Recommendations.” Plaintiff is advised that failure to file objections within the specified
2 time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153
3 (9th Cir. 1991).

4 DATED: October 7, 2015

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6 ALLISON CLAIRE
7 UNITED STATES MAGISTRATE JUDGE
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