

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KEVIN RUSSELL MEYER,

Plaintiff,

No. CIV S-06-2584-LKK-GGH P

vs.

ARNOLD SCHWARZENEGGER, et al.,

Defendants.

ORDER

_____/

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local General Order No. 262.

On May 27, 2008, the magistrate judge filed findings and recommendations herein 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 days. Plaintiff has filed objections to the findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 72-304, this court has conducted a de novo review of this case. Having carefully reviewed the entire file, the court finds the findings and recommendations to be supported by the record and by proper analysis.

Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed May 27, 2008 (Docket #35), are adopted in full; and
2. Defendants' January 18, 2008 (Docket # 21), motion to dismiss is granted in part and denied in part:
 - a. granted as to the allegations regarding the denial of a request for a lower bunk/lower tier chrono and as to defendant Todd and this claim and defendant are dismissed from this action;
 - b. granted as to defendant Schwarzenegger in his official capacity and this defendant is dismissed from this action;
 - c. granted as to plaintiff's claims for prospective injunctive relief and this action proceeds only as to plaintiff's claims for money damages against the remaining defendants;
 - d. granted as to defendants Grannis and Sullivan with leave to amend within twenty days of the filed date of this order;
 - e. denied as to plaintiff's claims of inadequate medical care in violation of the Eighth Amendment as to defendants Brimhall and Akintola in their individual capacities.
3. Plaintiff's motion for a TRO/preliminary injunctive relief, filed on February 11, 2008 (Docket # 24), is denied.

DATED: July 24, 2008

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LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT