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6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA

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9 GERALD TAYLOR,

CASE NO. 1:07-cv-00032-AWI-SMS

10 Plaintiff,

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, AND DENYING
DEFENDANT WOFFORD'S MOTION FOR
JUDGMENT ON THE PLEADINGS

11 v.

12 KEN CLARK, et al.,

(Docs. 85 and 100)

13 Defendants.
14 _____/

15 Plaintiff Gerald Taylor filed this civil rights action seeking relief under 42 U.S.C. § 1983
16 and California tort law on January 8, 2007. Plaintiff filed an amended complaint on June 20,
17 2007. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. §
18 636(b)(1)(B) and Local Rule 302.

19 On August 4, 2010, the Magistrate Judge issued a Findings and Recommendations
20 recommending that Defendant Wofford's Motion for Judgment on the Pleadings be denied. Fed.
21 R. Civ. P. 12(c). Defendant Wofford filed an Objection on August 31, 2010, and Plaintiff filed a
22 Response on September 14, 2010. Local Rule 304(b),(d).

23 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a
24 de novo review of this case. Having carefully reviewed the entire file, the Court finds the final
25 disposition of the Findings and Recommendations to be supported by the record and by proper
26 analysis. The Court finds that Defendant Wofford filed a timely unenumerated Rule 12(b)
27 motion to dismiss based on exhaustion under 42 U.S.C. § 1997e(a). See Wyatt v. Terhune, 315
28 F.3d 1108, 1119 (9th Cir. 2003); Villegas v. Buckley, No. 2:02-cv-01613, 2007 WL 3034449, at

1 *1, *2-3 (E.D. Cal. Oct. 15, 2007). However, the motion must be denied because Plaintiff
2 exhausted his administrative remedies.

3 Accordingly, IT IS HEREBY ORDERED that:

- 4 1. The Findings and Recommendations, filed August 4, 2010, is adopted in part; and
- 5 2. Defendant Wofford's Motion for Judgment on the Pleadings, filed April 29, 2010,
6 is denied.

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8 IT IS SO ORDERED.

9 Dated: December 21, 2010

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CHIEF UNITED STATES DISTRICT JUDGE