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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DORIAN DAVIS a.k.a.
WALI AT-TAQI DAVIS,

CASE NO. 1:07-cv-00696-OWW-SMS PC

Plaintiff,

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, GRANTING IN PART
AND DENYING IN PART DEFENDANT'S
MOTION TO DISMISS

v.

A. HEDGPETH,

(Docs. 40 and 45)

Defendant.

_____ /

Plaintiff Dorian Davis a.k.a. Wali At-Taqi Davis is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 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 Rule 302.

On January 19, 2010, the Magistrate Judge filed a Findings and Recommendations herein which was served on the parties and which contained notice to the parties that any objections to the Findings and Recommendations were to be filed within thirty days. The parties have not filed timely objections to the Findings and Recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C),

1 this Court has conducted a de novo review of this case. Having
2 carefully reviewed the entire file, the Court finds the Findings
3 and Recommendations to be supported by the record and by proper
4 analysis.

5 Accordingly, IT IS HEREBY ORDERED that:

- 6 1. The Findings and Recommendations, filed January 19, 2010,
7 is adopted in full;
- 8 2. Defendant's motion to dismiss Plaintiff's Eighth
9 Amendment claim for failure to exhaust is DENIED;
- 10 3. Defendant's motion to dismiss Plaintiff's due process
11 claim for failure to exhaust is GRANTED and the claim is
12 dismissed from this action without prejudice;
- 13 4. Defendant's motion to dismiss Plaintiff's Eighth
14 Amendment claim for failure to state a claim is DENIED;
- 15 5. Defendant's motion to dismiss Plaintiff's Eighth
16 Amendment claim on qualified immunity grounds is DENIED;
17 and
- 18 6. This matter is referred back to the Magistrate Judge for
19 further proceedings.

20 IT IS SO ORDERED.

21 Dated: March 9, 2010

22 /s/ Oliver W. Wanger
23 UNITED STATES DISTRICT JUDGE
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