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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

KEVIN FIELDS,

Plaintiff,

v.

JOSE MASIEL, et al.,

Defendants.

CASE NO. 1:10-cv-01699-AWI-BAM PC

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS AND DENYING  
DEFENDANTS’ MOTION TO DISMISS

(ECF Nos. 26, 26, 27, 30, 31, 38)

Plaintiff Kevin Fields 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 October 15, 2012, the Magistrate Judge filed a [Findings and Recommendations](#) that 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. On November 28, 2012, Defendants filed an [Objection](#).

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

As explained more fully by the Magistrate Judge, the Prison Litigation Reform Act of 1995, provides that “[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” 42

1 U.S.C. § 1997e(a). Exhaustion is required regardless of the relief sought by the prisoner and  
2 regardless of the relief offered by the process. Booth v. Churner, 532 U.S. 731, 741 (2001).

3 In the objections, Defendants contend that even though his appeal was granted at the first  
4 level Plaintiff did not conclude the exhaustion process because prison officials could have taken  
5 some additional action in response to Plaintiff's appeal. The only relief not granted was  
6 monetary relief, which all parties agree was not available. Defendants argue prison officials  
7 could have afforded Plaintiff additional relief had he filed additional appeals. The court finds  
8 Defendants' objections are not persuasive in light of Harvey v. Jordan, 605 F.3d 681 (9<sup>th</sup> Cir.  
9 2010), and other recent Ninth Circuit authority.

10 The Ninth Circuit has held that a prisoner is "not required to 'exhaust further levels of  
11 review once he [had] . . . been reliably informed by an administrator that no remedies are  
12 available,'" Marella v. Terhune, 568 F.3d 1024, 1027 (9<sup>th</sup> Cir. 2009) (per curiam) (quoting  
13 Brown v. Valoff, 422 F.3d 926, 935 (9<sup>th</sup> Cir. 2005)). In Harvey, the Ninth Circuit explained:

14 . . . . An inmate has no obligation to appeal from a grant of relief, or a  
15 partial grant that satisfies him, in order to exhaust his administrative remedies.  
16 Nor is it the prisoner's responsibility to ensure that prison officials actually  
17 provide the relief that they have promised.

18 That [the plaintiff] initially requested alternative forms of relief does not  
19 change our analysis. Once the prison officials purported to grant relief with which  
20 [the plaintiff] was satisfied, his exhaustion obligation ended. [The plaintiff's]  
21 complaint had been resolved, or so he was led to believe, and he was not required  
22 to appeal the favorable decision. Were we to reach the contrary conclusion, any  
23 prisoner who expressed his willingness to accept more than one form of  
24 relief-demonstrating a flexibility that increases the likelihood of an outcome  
25 satisfactory to both the prisoner and the prison officials - would have no recourse  
26 when prison officials purported to grant one of those alternative forms of relief,  
27 but then failed to implement their decision.

28 Harvey, 605 F.3d at 685 (internal cites omitted).

In his grievance, Plaintiff notified prison officials that officers had confiscated his  
medically prescribed pillows as retaliation for filing inmate grievances. Plaintiff requested the  
return of the pillows, that correctional officers stop retaliating against him, and monetary  
damages. This appeal notified prison officials of the problem at issue in this action. As found  
by the Magistrate Judge, this appeal was partially granted, and Plaintiff received all available  
relief requested – the prescribed pillows were returned and Plaintiff was told there would be no

1 retaliation. Plaintiff clearly received a favorable determination at the first level of review. This  
2 is sufficient to have exhausted Plaintiff's administrative remedies. See, e.g., Coats v. Fox, 481  
3 Fed.Appx. 390, 391, 2012 WL 4357872, at \*1 (9<sup>th</sup> Cir. 2012) (finding that a "fully granted"  
4 appeal to give medical care exhausted remedies); Glover v. Evans, 424 Fed.Appx. 694, 2011 WL  
5 1113269, at \*1 (9<sup>th</sup> Cir. 2011) (prison's granting of grievance in part at the first level satisfied  
6 exhaustion); Harvey, 605 F.3d at 685 (finding receipt of the partial grants to appeals qualified as  
7 exhausting the available administrative remedies); Douglas v. Banks, 2011 WL 1576770, at \* 5,  
8 C 09-3191 LHK (PR) (N.D.Cal.,2011) (defendants failed to show lack of exhaustion because  
9 plaintiff received the relief he had requested); Agnes v. Joseph, 2011 WL 4352843, \*4 (E.D.Cal.  
10 Sep 16, 2011) (NO. 1:10-CV-00807-LJO) (same); Jones v. Pleasant Valley State Prison, 2010  
11 WL 2197655, at \*4, 1:01-CV-05287-AWI-SMS PC (E.D.Cal. 2010) (partial grant of informal  
12 appeals satisfied exhaustion requirement). Defendants' position that Plaintiff needed to continue  
13 with the appeals process because some possible additional unrequested relief might be given is  
14 not supported by the Ninth Circuit's current interpretation of 42 U.S.C. § 1997e.

15 Accordingly, IT IS HEREBY ORDERED that:

- 16 1. The Findings and Recommendations, filed October 15, 2012, is adopted in full;
- 17 2. Defendants' Motion to Dismiss, filed May 16, 2012, is DENIED; and
- 18 3. Within thirty days from the date of service of this order, Defendants shall file an  
19 answer to the complaint.

20 IT IS SO ORDERED.

21 Dated: December 21, 2012

  
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23 UNITED STATES DISTRICT JUDGE  
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