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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA
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10 JAMES WASHINGTON,

11 Plaintiff,

12 v.

13 M. BITER, et al.,

14 Defendants.
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Case No. 1:14-cv-01411-LJO-MJS (PC)

**ORDER ADOPTING FINDINGS AND
RECOMMENDATION TO**

**(1) GRANT DEFENDANTS' MOTION
FOR PARTIAL DISMISSAL, AND**

**(2) GRANT DEFENDANTS' REQUEST
FOR JUDICIAL NOTICE**

(ECF No. 36)

CASE TO REMAIN OPEN

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19 Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil
20 rights action brought pursuant to 42 U.S.C. § 1983. The matter was referred to a United
21 States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302 of the
22 United States District Court for the Eastern District of California.

23 On July 13, 2015, the Magistrate Judge issued findings and recommendations to
24 grant Defendants' motion for partial dismissal and request for judicial notice. (ECF No.
25 36.) After the findings and recommendations issued, Plaintiff filed an unauthorized sur-
26 reply. (ECF No. 39.) He also filed objections, which referred to the sur-reply. (ECF No.
27 40.) Both the sur-reply and objections are considered herein.
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1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has
2 conducted a de novo review of this case. Having carefully reviewed the entire file, the
3 Court finds the findings and recommendations to be supported by the record and by
4 proper analysis.

5 The Magistrate Judge recommended dismissal of Plaintiff's state law claims
6 because Plaintiff failed to file a claim with the California Victim Compensation and
7 Government Claims Board (VCGCB) before filing suit, as required under the California
8 Tort Claims Act. Plaintiff's sur-reply and objections state that he properly presented his
9 state law claims by attempting to file an administrative grievance within the prison
10 grievance system. Plaintiff's contentions are without merit. Compliance with prison
11 grievance procedures does not satisfy the requirements of the California Tort Claims
12 Act. Cal. Gov't Code §§ 905, 911.2(a), 945.4 & 950.2; Mangold v. California Pub. Utils.
13 Comm'n, 67 F.3d 1470, 1477 (9th Cir. 1995). Plaintiff's state law claims must be
14 dismissed.

15 Accordingly, it is HEREBY ORDERED that:

- 16 1. The Court adopts the findings and recommendations (ECF No. 36), filed
17 July 13, 2015, in full;
- 18 2. Defendants' motion for partial dismissal (ECF No. 25) is GRANTED;
- 19 3. Defendants' request for judicial notice (ECF No. 26) is GRANTED;
- 20 4. Plaintiff's state law claims are DISMISSED with prejudice;
- 21 5. The case shall remain open for further proceedings on Plaintiff's Eighth
22 Amendment claims against Defendants Gomez and Swanson; and
- 23 6. Defendants shall file a responsive pleading as to the remaining claims
24 within fourteen (14) days of the date of this order.

25 IT IS SO ORDERED.

26 Dated: July 30, 2015

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE

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