

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

ANTHONY LORAN PERKINS,

Plaintiff,

vs.

SCOTT KERNAN, *et al.*,

Defendants.

No. 2:06-cv-00760-JKS-DAD

ORDER

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

On June 4, 2007, the Magistrate Judge filed Findings and Recommendations, 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.

Plaintiff's objections, to the extent they are germane to the issue presently under consideration—that he had exhausted his administrative remedies prior to initiating the instant lawsuit—for the most part reiterate his dissatisfaction with the manner in which the California Department of Corrections handled his grievances at the first and second levels of review. What Plaintiff does not address is the fact that, as is clearly established by the record, he had not completed the third, Director's, level of review available to him under California prison regulations prior to filing this action. 42 U.S.C. § 1997e(a). In that case, even where, as here, a plaintiff exhausts his administrative remedies during the pendency of the case, the Court must dismiss the complaint without prejudice. *See McKinney v. Carey*, 311 F.3d 1198, 1199–1200 (9th Cir. 2002).

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, with particular attention to those portions relevant or pertinent to the objections raised, 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 June 4, 2007, are adopted in full;
2. The Complaint filed herein is DISMISSED, without prejudice; and
3. The Clerk of the Court to enter final judgment accordingly.

Dated: February 8, 2008.

s/ James K. Singleton, Jr.
JAMES K. SINGLETON, JR.
United States District Judge