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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

THOMAS HIGHTOWER,

Plaintiff,

v.

ARNOLD SCHWARZENEGGER, et. al.,

Defendants.

CASE NO. 1:04-cv-06028-OWW-SMS (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, AND DISMISSING
CLAIMS AGAINST DEFENDANT FIGUEROA
WITHOUT PREJUDICE

(Docs. 69, 116)

OBJECTIONS DUE IN THIRTY (30) DAYS

Plaintiff, Thomas Hightower, a state prisoner proceeding pro se and in forma pauperis, has filed this civil rights action seeking relief under 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 72-302.

On July 10, 2009, 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. On August 13, 2009, Plaintiff filed objections. Defendants have not filed objections.

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

Accordingly, the Court HEREBY ORDERS:

1. The Findings and Recommendations, filed July 10, 2009, is adopted in full;

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- 2. Defendant Figueroa’s un-enumerated 12b Motion to Dismiss for failure to exhaust administrative remedies, filed October 27, 2008, is GRANTED; and
- 3. Plaintiff’s claim against Defendant Figueroa is dismissed without prejudice, pursuant to 42 U.S.C. sect 1997e(a).

IT IS SO ORDERED.

Dated: August 29, 2009

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE