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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SHAULTON J. MITCHELL,

Plaintiff,

v.

HERNANDEZ, et al.,

Defendants.

CASE NO. 1:07-cv-01322-AWI-DLB PC

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND GRANTING
IN PART AND DENYING IN PART
DEFENDANTS’ MOTION TO DISMISS

(Doc. [41](#), [53](#), [61](#))

Plaintiff Shaulton J. Mitchell (“plaintiff”) is a state prisoner proceeding pro se 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 February 9, 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 objection to the Findings and Recommendations was to be filed within twenty days. After receiving an extension of time, Plaintiff filed an [Objection](#) to the Findings and Recommendations on April 14, 2010.

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. Plaintiff’s contention that he attempted to submit several appeals which prison officials improperly rejected is unsupported by the evidence.

Accordingly, IT IS HEREBY ORDERED that:

1. The [Findings and Recommendations](#), filed February 9, 2010, is adopted in full;

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2. Defendants' [motion to dismiss](#) for Plaintiff's failure to exhaust administrative remedies, filed August 14, 2009, is GRANTED as to Plaintiff's claims of failure to protect, excessive force, retaliatory cell transfer, and retaliatory food deprivation and those claims are dismissed without prejudice;
3. Defendants Martinez, Aguirre, and Masiel are dismissed from this action;
4. Defendants' motion to dismiss is DENIED as to Plaintiff's claims of food deprivation; and
5. This action proceeds against Defendants Hernandez, Bustos, Compelbel, Gutierrez, and Sloss for food deprivation in violation of the Eighth Amendment.

IT IS SO ORDERED.

Dated: May 4, 2010

/s/ Anthony W. Ishii
CHIEF UNITED STATES DISTRICT JUDGE