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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

EDWARD DEMERSON,

CASE NO. 1:08-cv-00144-LJO-SKO PC

Plaintiff,

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS, DENYING  
DEFENDANTS’ MOTION TO DISMISS, AND  
REQUIRING DEFENDANTS TO FILE AN  
ANSWER WITHIN THIRTY DAYS

v.

JEANNE S. WOODFORD, et al.,

Defendants.

(Docs. 100 and 116)

Plaintiff Edward Demerson, a state prisoner proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983 on January 29, 2008. This action is proceeding on Plaintiff’s second amended complaint, filed June on 24, 2009, against Defendants Phillips, Campos, Amaro, Clausing, Bardonnex, Munoz, and Cartagina for using excessive physical force against Plaintiff, and against Defendants Munoz, Cartagina, Gregory, and Hillard for acting with deliberate indifference toward Plaintiff’s resulting injuries. 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 July 15, 2011, Defendants Phillips, Campos, Amaro, Clausing, Bardonnex, Munoz, Cartagina, and Hillard filed a motion to dismiss for failure to exhaust.<sup>1</sup> 42 U.S.C. § 1997e(a); Fed. R. Civ. P. 12(b). Plaintiff filed an opposition, Defendant filed a reply, and the motion was deemed submitted on October 3, 2011. Local Rule 230(1). On November 2, 2011, the Magistrate Judge

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<sup>1</sup> Defendant Gregory did not make an appearance in the action and default was entered against Gregory by the Clerk of the Court on November 2, 2011.

1 issued a Findings and Recommendations recommending denial of the motion. The twenty-day  
2 objection period has expired and no objections were filed.

3 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a de  
4 novo review of this case. Having carefully reviewed the entire file, the Court finds the Findings and  
5 Recommendations to be supported by the record and by proper analysis.

6 Accordingly, IT IS HEREBY ORDERED that:

- 7 1. The Court adopts the Findings and Recommendations filed on November 2, 2011,  
8 in full;
- 9 2. Defendants Phillips, Campos, Amaro, Clausing, Bardonnex, Munoz, Cartagina, and  
10 Hillard's motion to dismiss for failure to exhaust is denied, without prejudice; and
- 11 3. Defendants Phillips, Campos, Amaro, Clausing, Bardonnex, Munoz, Cartagina, and  
12 Hillard shall file an answer to Plaintiff's second amended complaint within **thirty**  
13 **(30) days** from the date of service of this order.

14  
15 IT IS SO ORDERED.

16 **Dated:** November 29, 2011

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