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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KAREEM BROWN,	CASE NO. 1:08-cv-01764-LJO-BAM PC
Plaintiff,	ORDER ADOPTING FINDINGS AND
v.	RECOMMENDATIONS AND DENYING
J. KAVANAUGH, et al.,	DEFENDANTS' MOTION TO DISMISS FOR
Defendants.	FAILURE TO EXHAUST ADMINISTRATIVE
	REMEDIES
	(ECF No. 39)

Plaintiff Kareem Brown is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed a Complaint on November 18, 2008. 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 December 15, 2011, 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 December 15, 2011, Defendants filed an Objection stating that they had no objection to the Findings and Recommendations, however requested clarification of the findings.

Although the parties did not argue that Plaintiff's appeal, dated September 27, 2008, exhausted Plaintiff's claims against Defendant Garcia, a review of the document shows that it addressed his retaliation claim against both Defendants Garcia and Kavanaugh. Plaintiff included a copy of this appeal, and complained that it had not been processed, in his October 23, 2008 grievance. Defendants presented no evidence to the Court to show that this appeal was addressed

1 by prison officials. Based upon the finding that Defendants did not carry their burden of establishing
2 failure to exhaust administrative remedies, the Motion to Dismiss for Failure to Exhaust
3 Administrative Remedies is denied for both Defendants Garcia and Kavanaugh.

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

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. The Findings and Recommendations, filed December 15, 2011, is adopted in full;
- 9 2. Defendants' Motion to Dismiss for Failure to Exhaust Administrative Remedies,
10 filed July 6, 2011, is DENIED.
- 11 3. This matter is referred to the Magistrate Judge for further proceedings.

12 IT IS SO ORDERED.

13 **Dated: January 12, 2012**

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