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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JAMES COLE,

Plaintiff,

v.

MUNOZ, et al.,

Defendants.

CASE NO. 1:09-cv-00476-OWW-GBC PC

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS RECOMMENDING
DENYING DEFENDANTS’ MOTION TO
DISMISS FOR FAILURE TO EXHAUST
ADMINISTRATIVE REMEDIES

(ECF Nos. 22, 28, 29)

Plaintiff James Cole (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on Plaintiff’s [complaint](#), filed March 13, 2009, against Defendants Munoz, Dicks, Rocha, and Blasdell for retaliation in violation of the First Amendment and excessive force in violation of the Eighth Amendment. (ECF No. 1.) 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 22, 2010, the Magistrate Judge issued [findings and recommendations](#) recommending Defendant’s [motion to dismiss](#) be denied. (ECF No. 28.) The parties were given thirty days within which to file objections, and Plaintiff filed an [objection](#) on January 4, 2011. (ECF No. 29.) Plaintiff’s objections have been considered.

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

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Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations, filed December 22, 2010, are adopted in full;
2. Defendant's motion to dismiss, filed August 9, 2010, is DENIED; and
3. This matter is referred back to the Magistrate Judge for further proceedings.

IT IS SO ORDERED.

Dated: February 8, 2011

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE