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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ROBERT JAMES DIXON,

Plaintiff,

v.

JAMES A. YATES, et al.,

Defendants.

CASE NO. 1:09-CV-00657-AWI-DLB PC

ORDER REQUIRING PARTIES TO
RESPOND TO OBJECTIONS

(DOC. 38)

RESPONSES DUE WITHIN FOURTEEN (14)
DAYS

Plaintiff Robert James Dixon (“Plaintiff”) is a prisoner in the custody of the California Department of Corrections and Rehabilitation (“CDCR”). This action is proceeding on Plaintiff’s amended complaint against Defendants F. Igbinosa and J. Diep¹ for violation of the Eighth Amendment. On September 20, 2010, Defendant Igbinosa filed a motion to dismiss for Plaintiff’s failure to exhaust administrative remedies. Plaintiff filed an opposition on May 31, 2011. On July 8, 2011, the undersigned issued a Findings and Recommendations (“F&R”), recommending that Defendant’s motion be granted. On July 29, 2011, Plaintiff filed his objections. Doc. 38.

Plaintiff’s complaint alleges, *inter alia*, that Defendant Igbinosa scheduled Plaintiff for a prison transfer, despite Plaintiff having an upcoming, necessary surgery. Plaintiff contends that he had filed an inmate grievance concerning his claim against Defendant Igbinosa. Pl.’s Objections 1-2. This grievance was treated as an emergency appeal, and was granted in part at

¹ Defendant Diep has not been served or appeared in this action.

1 the first level of review, cancelling Defendant Igbinsa's proposed transfer. *Id.*

2 The Court has examined the record in this action. In Plaintiff's opposition, Plaintiff
3 attached as an exhibit a screen out of Plaintiff's inmate grievance No. PVSP-D-08-1325, which
4 allegedly concerns Plaintiff's claims against Defendant Igbinsa. Pl.'s Opp'n, Ex. A, Doc. 36.
5 Neither party, however, has produced this grievance.

6 The Court cannot make a final determination regarding Defendant's motion to dismiss
7 without this grievance. Thus, the Court will require both parties to produce this grievance, if
8 possible. If a party fails to produce the grievance, the party is required to submit a declaration as
9 to why he was unable to do so.

10 Accordingly, it is HEREBY ORDERED that:

- 11 1. The parties are to respond to Plaintiff's objections within **fourteen (14) days** from
12 the date of service of this order;
- 13 2. This response is to include grievance No. PVSP-D-08-1325; and
- 14 3. If a party is unable to timely produce this grievance, the party is required to submit
15 a declaration explaining why he was unable to comply.

16 IT IS SO ORDERED.

17 **Dated: August 23, 2011**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE