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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

VIRGIL E. HOLT,

Plaintiff,

v.

R. NICHOLAS, et al.,

Defendants.

CASE NO. 1:09-cv-800-AWI-GBC (PC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS  
(Doc. 55)

ORDER GRANTING DEFENDANTS’  
UNENUMERATED 12(b) AND DISMISSING  
RETALIATION CLAIM AGAINST  
DEFENDANT HOLGUIN  
(Doc. 38)

**I. Factual and Procedural Background**

Plaintiff Virgil E. Holt, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on May 4, 2009. Doc. 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 March 22, 2011, Defendants filed a motion for judgment on the pleadings based on the Eighth Amendment claims being time-barred and filed an unenumerated 12(b) motion for failure to exhaust the retaliation claim against Defendant Holguin. Doc. 38. On May 23, 2011, Plaintiff filed an opposition. Doc. 45. On June 2, 2011, Defendants filed a reply wherein they withdrew their motion for judgment on the pleadings on the grounds of statute of limitations. Doc. 46. On November 14, 2011, the Magistrate Judge filed a Findings and Recommendations herein which recommended granting Defendants’ unenumerated 12(b) for failure to exhaust the retaliation claim against Defendant Holguin and gave Plaintiff thirty days to file any objections. Doc. 55. The thirty-day period has expired, and Plaintiff has not filed any objections.

1 **II. Conclusion and Order**

2 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a  
3 de novo review of this case. The Court concludes that the Findings and Recommendations are  
4 supported by the record and by proper analysis. Accordingly, the Court HEREBY ORDERS:

- 5 1. The Findings and Recommendations filed on November 14, 2011, is adopted in full  
6 (Doc. 55); and  
7 2. Defendants' unenumerated 12(b) motion is GRANTED and the retaliation claim  
8 against Defendant Holguin is dismissed. Doc. 38.

9 IT IS SO ORDERED.

10 Dated: February 22, 2012

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13 CHIEF UNITED STATES DISTRICT JUDGE  
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