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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MARLIN LATTEREAL ROYAL,

CASE NO. 1:09-cv-01407-BAM PC

Plaintiff,

ORDER GRANTING IN PART AND DENYING
IN PART DEFENDANTS’ MOTION TO
DISMISS AND DISMISSING CERTAIN
CLAIMS AND DEFENDANTS FOR FAILURE
TO EXHAUST ADMINISTRATIVE REMEDIES

v.

S. KNIGHT, et al.,

Defendants.

(ECF No. 33)

THIRTY DAY DEADLINE

_____/

Plaintiff Marlin Lattereal Royal (“Plaintiff”), a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983, filed this action on August 12, 2009. On September 3, 2009, Plaintiff consented to the jurisdiction of the Magistrate Judge. (ECF No. 5.) This action is proceeding on the First Amended Complaint, filed August 19, 2010. (ECF No. 15. Defendants filed a Motion to Dismiss on December 1, 2011. (ECF No. 23.) On February 29, 2012, Findings and Recommendations issued recommending granting in part and denying in part Defendants’ Motion to Dismiss. (ECF No. 33.) On March 8, 2012, Defendants consented to the Jurisdiction of the Magistrate Judge. (ECF No. 34.) On April 3, 2012, this action was reassigned to the undersigned. Accordingly, the Findings and Recommendations, issued February 29, 2012, shall become the order of this Court.

Based on the foregoing, IT IS HEREBY ORDERED that:

1. The Findings and Recommendations, issued February 29, 2012, is the order of this Court;

1 2. Defendants' Motion to Dismiss, filed December 1, 2011, is GRANTED IN PART
2 and DENIED IN PART as follows:

3 a. Plaintiff's claims against Defendants Turner and Gardner are DISMISSED,
4 without prejudice, for failure to exhaust administrative remedies;

5 b. Plaintiff's excessive force and deliberate indifference claims against
6 Defendant Knight based upon the incident in the standup cage are
7 DISMISSED, without prejudice, for failure to exhaust administrative
8 remedies;

9 c. Defendants' Motion to Dismiss Plaintiff's failure to protect claims against
10 Defendant Clark is DENIED;

11 d. Defendants' Motion to Dismiss Plaintiff's retaliation claim against Defendant
12 Knight is DENIED;

13 3. Defendants Turner and Gardner are DISMISSED from this action;

14 4. This action shall proceed on the First Amended Complaint against Defendant Knight
15 for excessive force in violation of the Eighth Amendment and retaliation in violation
16 of the First Amendment, and Defendant Clark for failure to protect in violation of the
17 Eighth Amendment; and

18 5. Defendants shall file a responsive pleading within thirty days from the date of service
19 of this order.

20 IT IS SO ORDERED.

21 Dated: April 3, 2012

/s/ Barbara A. McAuliffe
22 UNITED STATES MAGISTRATE JUDGE
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