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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KEVIN E. FIELDS,

Plaintiff,

vs.

P. PATTERSON, et al.,

Defendants.

1:10-cv-01700-LJO-GSA-PC

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT DEFENDANT
PATTERSON’S MOTION FOR PARTIAL
SUMMARY JUDGMENT FOR FAILURE
TO EXHAUST REMEDIES BE GRANTED
(ECF No. 35.)

OBJECTIONS, IF ANY, DUE WITHIN
THIRTY DAYS

I. BACKGROUND

Kevin E. Fields (“Plaintiff”) is a prisoner proceeding pro se with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on September 17, 2010. (ECF No. 1.) This action now proceeds with the First Amended Complaint filed on May 31, 2013, against Defendant Correctional Officer P. Patterson (“Defendant”) for use of excessive force in violation of the Eighth Amendment.¹ (ECF No. 16.)

¹On February 12, 2015, the court dismissed Plaintiff’s state law claims against defendants Molina and Finley and retaliation claims against defendants Patterson and Molina, on Plaintiff’s Rule 41 motion to dismiss. (ECF No. 51.) The court also dismissed defendants Molina and Finley from this action, based on the dismissal of all of the claims against them. (*Id.*) Previously, on March 12, 2014, the Court dismissed all other claims and defendants from this action, under Rule 18(a) or for Plaintiff’s failure to state a claim. (ECF No. 24.)

1 On September 10, 2014, defendants Molina, Patterson, and Finley filed a motion for
2 partial summary judgment under Rule 56 on the grounds that the undisputed facts establish that
3 Plaintiff failed to exhaust his available administrative remedies with respect to some of
4 Plaintiff's claims against them in this action. (ECF No. 39.)

5 On January 29, 2015, Plaintiff filed a notice of voluntary dismissal of all of the claims
6 against defendants Molina and Finley, and the retaliation claim against defendant Patterson.
7 (ECF No. 48.) As a result, this case now proceeds only on Plaintiff's excessive force claim
8 against Defendant Patterson. Moreover, Defendants' present motion for partial summary
9 judgment is now moot as to all of Plaintiff's dismissed claims against defendants Molina,
10 Finley, and Patterson. On April 3, 2015, Plaintiff filed a notice of non-opposition to the motion
11 for partial summary judgment.² (ECF No. 62.)

12 Defendant Patterson's motion for partial summary judgment is now before the Court.

13 **II. PLAINTIFF'S ALLEGATIONS**

14 Plaintiff is in the custody of the California Department of Corrections and
15 Rehabilitation (CDCR), presently incarcerated at Corcoran State Prison (CSP) in Corcoran,
16 California, where the events at issue in the First Amended Complaint allegedly occurred.
17 Plaintiff's factual allegations follow.

18 On September 16, 2009, at about 10:15 a.m., defendant C/O Patterson came to
19 Plaintiff's cell, and in the presence of Plaintiff's cell mate Maurice Robinson [not a defendant]
20 told Plaintiff that he had a disciplinary hearing, which he would not be allowed to attend unless
21 he put on a jumpsuit. Plaintiff asked C/O Patterson to show him something in writing stating
22 he had to wear a jumpsuit, and Patterson became irate. After a brief exchange of vulgarities
23 with Plaintiff, Patterson told Plaintiff he was going to call Lt. Finley, and tell him that Plaintiff
24 was refusing to wear a jumpsuit for his hearing. Then C/O Patterson walked away.

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27 ² Concurrently with their motion for summary judgment, Defendants served Plaintiff with the
28 requisite notice of the requirements for opposing the motion. Woods v. Carey, 684 F.3d 934, 939-41 (9th Cir.
2012); Rand v. Rowland, 154 F.3d 952, 960-61 (9th Cir. 1998). (ECF No. 35-1.)

1 When C/O Patterson returned to Plaintiff's cell, C/O G. Pinzon [not a defendant] was
2 with him. C/O Patterson told Plaintiff that he had spoken to Lt. Finley, who said to tell
3 Plaintiff he could not attend the hearing without wearing a jumpsuit. Plaintiff told C/O
4 Patterson that he was going to put on a jumpsuit, so he could attend the disciplinary hearing.
5 Plaintiff also told Patterson that he was going to file a staff complaint against Patterson and
6 Finley. Patterson got angry again. When Plaintiff put on the jumpsuit and walked to his cell
7 door to be secured in restraints, Patterson used an angry tone and told Plaintiff to go to the back
8 of the cell so he could cuff Robinson up.

9 After Patterson cuffed Robinson up, Plaintiff returned to the cell door to be secured in
10 waist-chain restraints. Patterson put the waist-chain cuffs on Plaintiff's right wrist extremely
11 tight. When Plaintiff told Patterson the cuffs were too tight, Patterson said to "shut the f--- up,"
12 then signaled for the control-booth officer to open the cell door. (Amended Complaint (ACP),
13 ECF No. 16 at 4 ¶16.)

14 After being removed from the cell, Plaintiff again told Patterson the cuffs were too tight
15 and asked him to loosen them. He responded by telling Plaintiff that he "wasn't loosening
16 nothing." (ACP, ECF No. 16 at 4 ¶17.) Plaintiff and Patterson again exchanged vulgarities.
17 Plaintiff heard C/O G. Pinzon yell, "Robinson, stop trying to assault me!" Plaintiff looked over
18 his right shoulder and saw Robinson's hands still secured behind his back and sticking out of
19 the food/handcuff port, as if waiting to be uncuffed. Plaintiff said to Pinzon, "Bitch, stop lying
20 on my celly. You're just mad because he filed a staff complaint on you and C/O Trupp."
21 (ACP at 5 ¶18.)

22 Because Plaintiff made the comment to Pinzon, Patterson slammed Plaintiff into the
23 bar-box and told him to "shut my black a-- mouth, before I get f---ed up real bad, for helping
24 Robinson file complaints against staff." (ACP at 5 ¶19.) Plaintiff told Patterson that he was
25 also going to write him up for slamming Plaintiff into the bar-box and threatening him for
26 helping his cell mate file staff complaints against C/Os Pinzon and Trupp. After another
27 exchange of vulgarities, C/O Patterson escorted Plaintiff to the 4B2A rotunda area, where he
28 was secured in a holding cell.

1 Plaintiff again asked Patterson to loosen up the cuffs, which had caused Plaintiff's right
2 hand and wrist to swell up so much that it cut into his wrist and caused his hand to go numb.
3 Patterson refused.

4 When Lt. Finley entered the unit, Plaintiff immediately told him what happened and
5 why. Plaintiff asked Lt. Finley to do a "use of force" packet, which is mandatory under
6 Administrative Bulletin 5103 and Corcoran's Operational Procedure no. 439 when an inmate
7 makes allegations of excessive/unnecessary force. (ACP at 5 ¶22.) Lt. Finley told Plaintiff to
8 hold on, and went into the 4B2R office, where he spoke to defendants C/O Patterson and Sgt.
9 E. Molina for approximately ten minutes.

10 Lt. Finley came out of the office and told Plaintiff that neither he nor Sgt. Molina were
11 going to do a "use of force" packet against C/O Patterson, but that he would loosen up the
12 waist-chain cuffs but not remove them. Lt. Finley also said he would have the LVN do a
13 "medical report of injury or unusual occurrence" on form CDC-7219, which was never shown
14 or given to Plaintiff. (ACP at 6 ¶23.) Lt. Finley also told Plaintiff that he and Sgt. Molina had
15 instructed C/O Patterson to file a false serious Rules Violation Report (RVR) alleging that
16 Plaintiff threatened to kill him, his wife, and his kids.

17 When Sgt. Molina and C/O Pinzon were returning Plaintiff to his cell, Plaintiff told
18 Molina he was going to file a staff complaint against C/O Patterson for retaliation and
19 excessive force, and a staff complaint against Molina and Finley for instructing Patterson to file
20 a false RVR against Plaintiff and for refusing to do a "use of force" packet against Patterson.
21 Sgt. Molina said -- in a very loud tone of voice that could be heard by all the inmates on the
22 tier, some who were high ranking gang members -- "Shut the f--- up snitch, or you'll be put on
23 f---ed up status like your celly." (ACP at 6 ¶26.) They had been generating false chronos to
24 inmates, identifying Plaintiff's cell mate as a child molester for the purpose of getting him
25 stabbed.

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1 **III. LEGAL STANDARDS**

2 **A. Statutory Exhaustion Requirement**

3 Section 1997e(a) of the Prison Litigation Reform Act of 1995 (PLRA) provides that
4 “[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any
5 other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until
6 such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). Prisoners
7 are required to exhaust the available administrative remedies prior to filing suit. Jones v. Bock,
8 549 U.S. 199, 211, 127 S.Ct. 910, 918-19 (2007); McKinney v. Carey, 311 F.3d 1198, 1199-
9 1201 (9th Cir. 2002). Exhaustion is required regardless of the relief sought by the prisoner and
10 regardless of the relief offered by the process, Booth v. Churner, 532 U.S. 731, 741, 121 S.Ct.
11 1819 (2001), and the exhaustion requirement applies to all prisoner suits relating to prison life,
12 Porter v. Nussle, 534 U.S. 516, 532, 122 S.Ct. 983, 993 (2002).

13 An untimely or otherwise procedurally defective appeal will not satisfy the exhaustion
14 requirement. Woodford v. Ngo, 548 U.S. 81, 90, 126 S.Ct. 2378, 2386, 165 L.Ed.2d 368
15 (2006). When an inmate's administrative grievance is improperly rejected on procedural
16 grounds, however, exhaustion may be excused as “effectively unavailable.” Sapp v. Kimbrell,
17 623 F.3d 813, 823 (9th Cir. 2010); see also Nunez v. Duncan, 591 F.3d 1217, 1224–26 (9th Cir.
18 2010) (warden's mistake rendered prisoner's administrative remedies “effectively unavailable”);
19 Ward v. Chavez, 678 F.3d 1042, 1044-45 (9th Cir. 2012) (exhaustion excused where futile);
20 Brown v. Valoff, 422 F.3d 926, 940 (9th Cir. 2005) (plaintiff not required to proceed to third
21 level where appeal granted at second level and no further relief was available).

22 **B. California Department of Corrections and Rehabilitation (CDCR)**
23 **Administrative Grievance System**

24 The Court takes judicial notice of the fact that the State of California provides its
25 prisoners and parolees the right to appeal administratively “any policy, decision, action,
26 condition, or omission by the department or its staff that the inmate or parolee can demonstrate
27 as having a material adverse effect upon his or her health, safety, or welfare.” Cal.Code Regs.

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1 tit. 15 § 3084.1(a). The process is initiated by submitting a CDCR Form 602. Id. at §
2 3084.2(a).

3 At the time of the events giving rise to the present action, California prisoners were
4 required to submit appeals within fifteen working days of the event being appealed, and the
5 process is initiated by submission of the appeal to the informal level, or in some circumstances,
6 the first formal level. Id. at §§ 3084.5, 3084.6(c) (2009). Four levels of appeal were involved,
7 including the informal level, first formal level, second formal level, and third formal level. Id.
8 at § 3084.5 (2009). A final decision at the third level³ of review satisfies the exhaustion
9 requirement under 42 U.S.C. § 1997e(a). Id. at § 3084.5(d); see Lira v. Herrera, 427 F.3d
10 1164, 1166 (9th Cir. 2005).

11 In order to satisfy § 1997e(a), California state prisoners are required to use this process
12 to exhaust their claims prior to filing suit. Woodford, 548 U.S. at 85 (2006); McKinney, 311
13 F.3d. at 1199-1201.

14 **C. Motion for Summary Judgment for Failure to Exhaust**

15 The failure to exhaust in compliance with section 1997e(a) is an affirmative defense
16 under which Defendants have the burden of raising and proving the absence of exhaustion.
17 Jones, 549 U.S. at 216; Wyatt v. Terhune, 315 F.3d 1108, 1119 (9th Cir. 2003). On April 3,
18 2014, the United States Court of Appeals for the Ninth Circuit issued a decision overruling
19 Wyatt with respect to the proper procedural device for raising the affirmative defense of
20 exhaustion under § 1997e(a). Albino v. Baca (“Albino II”), 747 F.3d 1162, 1168–69 (9th Cir.
21 2014) (en banc). Following the decision in Albino II, defendants may raise exhaustion
22 deficiencies as an affirmative defense under § 1997e(a) in either (1) a motion to dismiss
23 pursuant to Rule 12(b)(6)⁴ or (2) a motion for summary judgment under Rule 56. Id. If the
24 Court concludes that Plaintiff has failed to exhaust, the proper remedy is dismissal without
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27 ³ The third level is sometimes known as the Director’s level.

28 ⁴ Motions to dismiss under Rule 12(b)(6) are only appropriate “[i]n the rare event a failure to
exhaust is clear on the face of the complaint.” Albino II, 747 F.3d at 1162.

1 prejudice of the portions of the complaint barred by § 1997e(e). Jones, 549 U.S. at 223–24;
2 Lira v. Herrera, 427 F.3d 1164, 1175–76 (9th Cir. 2005).

3 Summary judgment is appropriate when it is demonstrated that there “is no genuine
4 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed.
5 R. Civ. P. 56(a); Albino II, 747 F.3d at 1169 (“If there is a genuine dispute about material facts,
6 summary judgment will not be granted.”) A party asserting that a fact cannot be disputed must
7 support the assertion by “citing to particular parts of materials in the record, including
8 depositions, documents, electronically stored information, affidavits or declarations,
9 stipulations (including those made for purposes of the motion only), admissions, interrogatory
10 answers, or other materials, or showing that the materials cited do not establish the absence or
11 presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to
12 support the fact.” Fed. R. Civ. P. 56(c)(1). The Court may consider other materials in the
13 record not cited to by the parties, but is not required to do so. Fed. R. Civ. P. 56(c)(3); Carmen
14 v. San Francisco Unified School Dist., 237 F.3d 1026, 1031 (9th Cir. 2001); accord Simmons v.
15 Navajo County, Ariz., 609 F.3d 1011, 1017 (9th Cir. 2010). In judging the evidence at the
16 summary judgment stage, the Court “must draw all reasonable inferences in the light most
17 favorable to the nonmoving party.” Comite de Jornaleros de Redondo Beach v. City of
18 Redondo Beach, 657 F.3d 936, 942 (9th Cir. 2011). The Court must liberally construe
19 Plaintiff’s filings because he is a pro se prisoner. Thomas v. Ponder, 611 F.3d 1144, 1150 (9th
20 Cir. 2010) (quotation marks and citations omitted).

21 In a summary judgment motion for failure to exhaust administrative remedies, the
22 defendants have the initial burden to prove “that there was an available administrative remedy,
23 and that the prisoner did not exhaust that available remedy.” Albino II, 747 F.3d at 1172. If
24 the defendants carry that burden, “the burden shifts to the prisoner to come forward with
25 evidence showing that there is something in his particular case that made the existing and
26 generally available administrative remedies effectively unavailable to him.” Id. The ultimate
27 burden of proof remains with defendants, however. Id. “If material facts are disputed,

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1 summary judgment should be denied, and the district judge rather than a jury should determine
2 the facts.” Id. at 1166.

3 **IV. DEFENDANTS’ STATEMENT OF UNDISPUTED FACTS (DUF)⁵**

4 **BACKGROUND**

- 5 1. Plaintiff Kevin E. Fields is a state prisoner in the custody of the California
6 Department of Corrections and Rehabilitation (CDCR). (Am. Compl., ECF No.
7 16 at ¶ 4.)
- 8 2. At all times relevant to this lawsuit, Plaintiff was incarcerated in the Security
9 Housing Unit at California State Prison, Corcoran (CSP-Cor) in Corcoran,
10 California. (Id.)
- 11 3. Also at all relevant times to this lawsuit, Defendant Correctional Officer
12 Patterson, Defendant Correctional Sergeant Molina, and Defendant Correctional
13 Lieutenant Finley were employed by CDCR at CSP-Cor. (Am. Compl., ECF
14 No. 16 at ¶ 5.)

15 **PLAINTIFF’S PRISONER GRIEVANCES**

- 16 4. The Office of Appeals (OOA) provides the third and final formal level of
17 administrative review of non-health care appeals filed by inmates and parolees
18 of the State of California. Prior to January 28, 2011, this final level of review
19 was known as the Director’s Level, however, it is now officially entitled the
20 Third Level. (R. Briggs Decl. ¶¶ 1-2.)
- 21 5. OOA maintains the Inmate/Parolee Appeals Tracking System, which is an
22 electronic record of each inmate grievance that has proceeded through the Third
23 Level of Review. When a grievance is received by OOA, it is assigned a third
24 level tracking number—whether it is screened out or accepted—and entered into
25 the computer tracking system. The computer system for tracking accepted
26 grievances was commenced in 1993. The following information is kept in the

27
28 ⁵ These facts are undisputed only for purposes of this motion for summary judgment.

1 electronic record: grievance log number, the category (nature/subject) of the
2 grievance, institutional log numbers, inmate's name and CDCR number, the
3 institution where the grievance arose, the date that the grievance is received and
4 closed, and final disposition of the grievance. The electronic record also shows
5 whether a grievance was screened out and the reason it was screened out. (R.
6 Briggs Decl. ¶ 3.)

7 6. The OOA also keeps a copy of grievances and any response to the grievance
8 prepared by OOA. (R. Briggs Decl. ¶ 4.)

9 7. CDCR provides its prisoners and paroles with a comprehensive appeals process
10 in which they may administratively appeal a "decision, action, condition, or
11 policy which they can demonstrate as having a material adverse effect on their
12 welfare" made by any officer of CDCR. (R. Briggs Decl. ¶ 5.)

13 8. Prior to January 28, 2011, CDCR's inmate appeal process had four levels of
14 appeal: (1) informal resolution; (2) formal appeal; (3) second-level appeal to the
15 institution head or designee; and (4) third-level appeal to the Chief of the IAB.
16 In addition to numerous changes in the new regulations implemented January
17 28, 2011, inmates are no longer required to seek resolution at the informal level.
18 (R. Briggs Decl. ¶ 6.)

19 9. OOA provides the third and final formal level of administrative review of all
20 appeals filed by inmates and parolees of the State of California that do not
21 concern dental, medical, or mental health care. (R. Briggs Decl. ¶ 7.)

22 10. OOA conducted a search of its records for non-healthcare related appeals
23 submitted by Kevin Fields (P-83425). (R. Briggs Decl. ¶¶ 10-9.)

24 11. Information maintained at OOA shows that between September 16, 2009, when
25 the alleged incidents at issue took place, and September 17, 2010, when this
26 lawsuit was initiated, Plaintiff submitted eight appeals that were accepted and
27 adjudicated at the Director's Level of Review. (R. Briggs Decl. ¶ 9.)
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- 1 12. A review of Plaintiff's exhausted grievances reveals that only the grievances
2 bearing the log numbers COR-09-03448 and COR-09-04185 involve incidents
3 at CSP-Cor that took place on September 16, 2009. (R. Briggs Decl. ¶ 10.)
- 4 13. In grievance log number COR-09-03448, Plaintiff alleged Officer Patterson
5 utilized unnecessary/excessive force against him by placing handcuffs on him so
6 tight that they cut through his skin and caused nerve damage. (R. Briggs Decl.,
7 Ex. B.)
- 8 14. In grievance log number COR-09-03448, Plaintiff also alleged Lieutenant Finley
9 and Sergeant Molina refused his request to generate a use of force packet. (R.
10 Briggs Decl., Ex. B.)
- 11 15. In grievance log number COR-09-04185, Plaintiff alleged Officer Patterson
12 generated a CDCR Form 115 Rules Violation Report against Plaintiff in
13 retaliation for Plaintiff filing a staff complaint against Officer Patterson. (R.
14 Briggs Decl., Ex. E.)
- 15 16. Plaintiff did not exhaust any other non-healthcare related grievances at the first
16 or second levels of review between September 16, 2009 and September 17,
17 2010. (Goree Decl. ¶ 5.)

18 **PLAINTIFF'S GOVERNMENT CLAIMS**

- 19 17. On July 25, 2014, staff at the Office of the Attorney General inquired with the
20 State of California's Victim Compensation and Government Claims Board
21 (Board) as to whether Plaintiff submitted any claims between September 16,
22 2009, and March 16, 2010. (Goodwin Decl. ¶ 2.)
- 23 18. On August 27, 2014, the Office of the Attorney General received a custodian-of-
24 records declaration from G. Brooks, the custodian of records for the Board.
25 Attached to this declaration is a certified copy of Plaintiff's government claim,
26 bearing log number G586271, which was submitted on October 19, 2009.
27 (Goodwin Decl. ¶ 3; Ex. I.)
28

1 19. Plaintiff's claim number G586271 regarded incidents between October 12, 2009
2 and October 16, 2009, during which Plaintiff alleges contaminated sewer water
3 drained into his cell. Plaintiff further alleges it contaminated Plaintiff's drinking
4 water, that prison officials failed to move Plaintiff, and prison officials also
5 failed to take reasonable steps to fix the problem. (Goodwin Decl. Ex. I.)

6 20. The Board mailed a letter to Plaintiff on January 28, 2010, rejecting Plaintiff's
7 claim. (Goodwin Decl. Ex. I.)

8 **V. DEFENDANT PATTERSON'S MOTION**

9 Defendant Patterson ("Defendant") acknowledges that Plaintiff exhausted his
10 administrative remedies concerning his allegation that Defendant applied a handcuff on
11 Plaintiff's wrist too tight. However, Defendant argues that Plaintiff failed to exhaust his
12 administrative remedies concerning his allegation that Defendant slammed him into a "bar
13 box," because between September 16, 2009 (the date of the incidents alleged) and September
14 17, 2010 (when this lawsuit was initiated), Plaintiff submitted eight non-healthcare appeals that
15 were accepted and adjudicated at the Director's Level of review, and none of them alleged that
16 Defendant slammed Plaintiff into a "bar box" on September 16, 2009. (DUF 10-11.)

17 Only two of Plaintiff's eight appeals concern incidents that took place on September 16,
18 2009 at CSP: log numbers COR-09-03448 and COR-09-04815. (DUF 12.) In grievance
19 number COR-09-03448, Plaintiff alleged that Defendant used excessive force against him by
20 placing handcuffs on him too tight. (DUF 13.) In grievance log number COR-09-04815,
21 Plaintiff alleged that Defendant generated a CDCR Form 115 RVR against Plaintiff in
22 retaliation for Plaintiff filing a staff complaint against Defendant. (DUF 15.) Plaintiff did not
23 exhaust any other non-healthcare grievances at the first or second levels of review between
24 September 16, 2009 and September 17, 2009. (DUF 16.)

25 Based on an examination of Defendant's Undisputed Facts and evidence, the court finds
26 that Defendant has met his burden of showing evidence that there was an administrative
27 remedy available to Plaintiff, but that Plaintiff did not exhaust the appeals process for his
28 excessive force claim against Defendant Patterson for slamming Plaintiff into a "bar box" on

1 September 16, 2009. Therefore, the burden shifts to Plaintiff to come forward with evidence
2 showing that he did exhaust his available remedies concerning that allegation, or that there is
3 something in his particular case that made the existing and generally available administrative
4 remedies effectively unavailable to him.

5 Plaintiff has filed a notice of non-opposition to Defendant's motion for partial summary
6 judgment. (ECF No. 62.)

7 **VI. ANALYSIS**

8 This case now proceeds on one claim: for excessive force, against Defendant C/O P.
9 Patterson, for applying a handcuff on Plaintiff's wrist too tight, and for slamming Plaintiff into
10 a "bar box" on September 16, 2009.

11 Defendant acknowledges that Plaintiff exhausted his administrative remedies
12 concerning the allegation that Defendant applied a handcuff too tight, and Plaintiff has filed
13 notice that he does not oppose Defendant's motion for partial summary judgment concerning
14 the allegation that Defendant slammed him into a "bar box." Therefore, Defendant's motion
15 for partial summary judgment should be granted.

16 **VII. CONCLUSION AND RECOMMENDATIONS**

17 Defendant Patterson has met his burden of demonstrating that under the undisputed
18 facts, Plaintiff failed to exhaust his remedies prior to filing suit, in compliance with § 1997e(a),
19 concerning his allegation that Defendant Patterson slammed him into a "bar box" on September
20 16, 2009. Defendant has shown an absence in the official records of any evidence that Plaintiff
21 filed an inmate appeal pursuant to Title 15 of the California Code of Regulations § 3084.1, et
22 seq., concerning Plaintiff's allegation in the complaint that defendant Patterson slammed him
23 into a "bar box." Plaintiff has filed notice that he does not oppose Defendant's motion.

24 Therefore, **IT IS HEREBY RECOMMENDED that:**

- 25 1. Defendant Patterson's motion for partial summary judgment, filed on
26 September 10, 2014, be GRANTED;
- 27 2. Plaintiff's claim that Defendant Patterson slammed him into a "bar box" be
28 DISMISSED without prejudice; and

