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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

LAWRENCE CHRISTOPHER SMITH,

Plaintiff,

v.

ALLISON, et al.,

Defendants.

Case No. 1:10-cv-01814-LJO-JLT (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND

(Docs. 69, 88, 90, 94, 108, 113, 114)

Plaintiff, Lawrence Christopher Smith, is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action under 42 U.S.C. § 1983 which he filed on October 1, 2010. 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 October 17, 2014, the Magistrate Judge filed a Findings and Recommendations to grant and deny Defendants' motion for summary judgment based on Plaintiff's failure to exhaust available administrative remedies. (Doc. 108.) Due to typographical errors, an Amended Findings and Recommendations on November 19, 2014 and a final, Second Amended Findings and Recommendations issued that same day. (Docs. 113, 114.) The Second Amended Findings and Recommendations was served on the parties and contained notice to the parties that objections to it were to be filed within thirty days. Plaintiff filed his objections on December 29, 2014. (Doc. 125.) Defendants filed none.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a *de novo* review of this case. Having carefully reviewed the entire file, the Court finds the Findings

1 and Recommendations to be supported by the record and by proper analysis.

2 Accordingly, IT IS HEREBY ORDERED that:

3 1. the Second Amended Findings and Recommendations, filed on November 19, 2014
4 (Doc. 114), is adopted in full;

5 2. the Findings and Recommendations and Amended Findings and Recommendations,
6 filed on October 17, 2014 (Doc. 108) and November 19, 2014 (Doc. 113) are
7 STRICKEN from the record;

8 2. the motion for summary judgment, filed July 22, 2014 (Doc. 69), is GRANTED IN
9 PART and DENIED IN PART as follows:

10 a. The motion as to Defendant Gallagher is GRANTED and Defendant
11 Gallagher is DISMISSED from this action;

12 b. The motion as to Defendant Goss is DENIED as to the due process claim
13 and GRANTED as to the retaliation claim;

14 3. the motion by Defendants Goss and Gallagher that a preliminary hearing be set to
15 resolve any factual disputes is DENIED;

16 4. the motion to strike Plaintiff's opposition to their motion for summary judgment,
17 filed by Defendants Goss and Gallagher on August 25, 2014 (Doc. 88), is
18 DENIED;

19 5. Plaintiff's objections to the Court's order (Doc. 86) staying discovery in this matter
20 until the ruling on Defendants' motion for summary judgment issues, filed on
21 August 29, 2014 (Doc. 90), is OVERRULED and to the extent it may be construed
22 as a motion for reconsideration it is DENIED; and

23 6. Plaintiff's motion for additional discovery, filed September 19, 2014 (Doc. 94) is
24 DENIED.

25 IT IS SO ORDERED.

26 Dated: December 31, 2014

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE

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