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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

NICOLAS MORAN,  
Plaintiff,  
v.  
K. DUTRA, et al.,  
Defendants.

Case No. 1:11-cv-00914-LJO-MJS (PC)

**ORDER ADOPTING FINDINGS AND  
RECOMMENDATION TO GRANT  
DEFENDANT ONWUBUYA'S MOTION  
FOR SUMMARY JUDGMENT**

**(ECF No. 139)**

**CASE TO REMAIN OPEN**

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302 of the United States District Court for the Eastern District of California.

On January 13, 2016, the Magistrate Judge issued findings and recommendations to grant Defendant Onwubya's motion for summary judgment on the ground that Plaintiff failed to exhaust administrative remedies against her. (ECF No. 139.) Plaintiff filed objections. (ECF No. 145.) Defendant filed a response. (ECF No. 148.)

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

1 Court finds the findings and recommendations to be supported by the record and by  
2 proper analysis. Plaintiff's objections fail to raise an issue of fact or law under the  
3 findings and recommendations. Although Plaintiff exhausted an administrative appeal  
4 against Defendant Onwubuya, that appeal did not address the denial of assistive  
5 devices. Such denial is the only conduct alleged by Plaintiff that could support a  
6 cognizable claim against Defendant Onwubuya in this action. Accordingly, the  
7 Magistrate Judge properly concluded that Plaintiff failed to exhaust administrative  
8 remedies.

9 Accordingly, it is HEREBY ORDERED that:

- 10 1. The Court adopts the January 13, 2016 findings and recommendations  
11 (ECF No. 139) in full;
- 12 2. Defendant Onwubuya's motion for summary judgment (ECF No. 132) is  
13 GRANTED;
- 14 3. Defendant Onwubuya is DISMISSED;
- 15 4. The case shall remain open for further proceedings on Plaintiff's Eighth  
16 Amendment claims against Defendants Dutra and Brockmeyer; and
- 17 5. The matter is referred back to the Magistrate Judge for scheduling of trial  
18 and pretrial matters.

19 IT IS SO ORDERED.

20 Dated: April 14, 2016

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