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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

ANDREW W. MARTIN,  
  
                    Plaintiff,  
  
          v.  
  
F. CHAVEZ, et al.,  
  
                    Defendants.

Case No. 1:11-cv-01461-AWI-DLB PC

**ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS,  
RECOMMENDING GRANTING  
DEFENDANTS’ MOTION TO DISMISS**

(ECF Nos. 24 & 49)

Plaintiff Andrew W. Martin (“Plaintiff”) is a prisoner in the custody of the California Department of Corrections and Rehabilitation (“CDCR”). Plaintiff is proceeding pro se and in forma pauperis in this civil action pursuant to 42 U.S.C. § 1983. This action is proceeding on Plaintiff’s First Amended Complaint, filed September 6, 2012, against Defendants A. Flores and E. Borges for excessive force in violation of the Eighth Amendment, and against Defendants Smith, Krpan, and Cope for deliberate indifference to a serious medical need, in violation of the Eighth Amendment. (ECF No. 10.) Pending before the Court is Defendant Borges’ and Defendant Cope’s Motion to Dismiss, filed June 17, 2013, pursuant to the unenumerated portion of Rule 12(b) of the Federal Rules of Civil Procedure, for Plaintiff’s failure to exhaust administrative remedies. (ECF No. 24.) On December 17, 2013, the Court issued a findings and recommendations recommending granting Defendant Borges’ and Defendant Cope’s Motion to Dismiss. (ECF No. 49.) Neither party filed any objections.

1 Pursuant to 28 U.S.C. § 636(b)(1)(C), the Court has conducted a de novo review of this case.  
2 Having carefully reviewed the entire file, the Court finds the findings and recommendations to be  
3 supported by the record and by proper analysis.

4 Accordingly, it is HEREBY ORDDERED that:

- 5 1. The findings and recommendations, filed on December 17, 2013, in full; and
- 6 2. Defendants Borges and Cope are dismissed from this action, without prejudice, for  
7 Plaintiff's failure to exhaust administrative remedies pursuant to 42 U.S.C. §  
8 1997e(a).

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11 IT IS SO ORDERED.

12 Dated: February 21, 2014

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14 SENIOR DISTRICT JUDGE