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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JASDEV SINGH,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY,

Defendant.

CASE NO. 1:12-cv-00498-AWI-SKO

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS THAT
DEFENDANT'S MOTION TO
DISMISS BE GRANTED IN PART
AND DENIED IN PART**

(Doc. 19, 31, 35)

**ORDER REGARDING SCREENING
OF PLAINTIFF'S COMPLAINT**

(Doc. 1)

On April 19, 2013, the Magistrate Judge issued Findings and Recommendations ("F&R") that Defendant's motion to dismiss be granted in part and denied in part. (Doc. 35.) The F&R was served on all parties appearing in the action and contained notice that any objections were to be filed within twenty-eight (28) days after service of the order. Defendant filed an objection.¹

In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), this Court has conducted a *de novo* review of the case. Having carefully reviewed the entire file, the Court concludes that the Magistrate Judge's F&R is supported by the record and proper analysis.

¹ Defendant's objection was limited to noting that the Conclusion and Recommendation section of the April 19, 2013, F&R at page 35 omitted reference to Plaintiff's seventh cause of action for emotional distress under the Federal Tort Claims Act ("FTCA"), which was substantively addressed at pages 27:6 through 28:20, wherein the Magistrate Judge recommended that Plaintiff's FTCA claim be dismissed without prejudice. (Doc. 35, 27:6-28:20.) No objection to the substantive recommendation was made.

Accordingly, IT IS HEREBY ORDERED that:

1. The Findings and Recommendations issued April 19, 2013, are ADOPTED IN FULL;
2. Defendant's motion to dismiss Plaintiff's fifth cause of action for failure to exhaust administrative remedies is GRANTED and the claim is DISMISSED without prejudice to filing a new action following administrative exhaustion;
3. Defendant's motion to dismiss Plaintiff's seventh cause of action under the FTCA for failure to exhaust administrative remedies is GRANTED and the claim is DISMISSED without prejudice to filing a new action following administrative exhaustion;
4. Defendant's motion to dismiss Plaintiff's sixth cause of action for failure to exhaust administrative remedies under the Privacy Act is DENIED;
5. Defendant's motion to dismiss Plaintiff's first, second, third, fourth, and sixth causes of action for failure to exhaust administrative remedies under the PLRA is DENIED;
6. Based upon *sua sponte* screening of Plaintiff's complaint pursuant to 28 U.S.C. § 1915A:
 - a. Plaintiff's first, second, third, and sixth causes of action are DISMISSED without prejudice and with leave to amend for failure to state a claim upon which relief may be granted;
 - b. Plaintiff's fourth cause of action is DISMISSED with prejudice and without leave to amend; and
7. Plaintiff shall file an amended complaint within 30 days, but as set forth above, amendment of the complaint in this case is limited to the first, second, third, and sixth causes of action.

IT IS SO ORDERED.

Dated: June 6, 2013



SENIOR DISTRICT JUDGE