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4 **UNITED STATES DISTRICT COURT**

5 EASTERN DISTRICT OF CALIFORNIA

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9 BRYAN E. RANSOM,

10 Plaintiff,

11 vs.

12 RODOLFO AGUIRRE, et al.,

13 Defendants.

) 1:12cv01343 AWI DLB PC  
)  
)

) ORDER ADOPTING FINDINGS  
) AND RECOMMENDATIONS AND  
) GRANTING IN PART AND DENYING IN  
) PART DEFENDANTS' MOTION TO  
) DISMISS

) (Document 56)

14  
15 Plaintiff Bryan E. Ransom ("Plaintiff") is a prisoner in the custody of the California  
16 Department of Corrections and Rehabilitation ("CDCR"). Plaintiff is proceeding pro se in this  
17 civil rights action pursuant to 42 U.S.C. § 1983. Defendants removed the action on August 16,  
18 2012.

19 On June 17, 2013, Defendants filed an unenumerated Rule 12(b) Motion to Dismiss  
20 based on Plaintiff's failure to exhaust. The matter was referred to a United States Magistrate  
21 Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

22 On November 1, 2013, the Court issued [Findings and Recommendations](#) that Defendants'  
23 motion be granted in part and denied in part. Defendants filed [objections](#) on November 27,  
24 2013. Plaintiff filed [objections](#) on December 4, 2013, and Defendants [replied](#) to those objections  
25 on December 18, 2013.

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

1 objections and Defendants' reply, the Court finds that the Findings and Recommendations are  
2 supported by the record and by proper analysis.

3 Plaintiff's arguments in his objections are without merit. The use of the words "will  
4 continue" and "every" in the grievance response does not mean that his original grievance  
5 included a period in the future.

6 Plaintiff also contends that the cancellation of his July 22, 2011, appeal, "for all intents  
7 and purposes," rendered administrative remedies unavailable. Obj. 9. Plaintiff states that  
8 appealing the cancellation is a separate issue from the underlying grievance issue. While it may  
9 be a separate issue, a successful appeal on the cancellation issue would have allowed Plaintiff to  
10 proceed with his grievance. Plaintiff did not attempt to appeal, however, and cannot demonstrate  
11 that there were no available remedies.

12 Defendants' objections are based on their request for an evidentiary hearing to address  
13 the credibility issues identified by the Magistrate Judge. The Magistrate Judge recommended  
14 denial without prejudice of the two claims where factual issues existed. By separate order, the  
15 Court will address Defendants' request for an evidentiary hearing. However, the denial without  
16 prejudice remains supported by the record and proper analysis.

17 Accordingly, IT IS HEREBY ORDERED that:

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- 19 1. The Findings and Recommendations, filed November 1, 2013, are ADOPTED in  
20 full; and
  - 21 2. Defendants' Motion to Dismiss, filed on June 17, 2013, is GRANTED IN PART  
22 and DENIED IN PART.
- 23

24 IT IS SO ORDERED.

25 Dated: March 12, 2014

26   
27 SENIOR DISTRICT JUDGE