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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERTO HERRERA,
Plaintiff,
v.
ROUCH,
Defendant.

Case No. 1:13-cv-00289-LJO-MJS (PC)
**ORDER ADOPTING FINDINGS AND
RECOMMENDATION TO DENY
DEFENDANT’S MOTION TO DISMISS
FOR FAILURE TO STATE A CLAIM**
(ECF Nos. 32 & 88)

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 action proceeds against Defendant Rouch on Plaintiff’s inadequate medical care claim. (ECF No. 18.) 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 September 16, 2014, the Magistrate Judge issued findings and a recommendation to deny Defendant’s motion to dismiss for failure to state a claim. (ECF No. 88.) The motion also sought to dismiss the action for failure to exhaust administrative remedies, but Defendant was permitted to withdraw that argument and to raise it in a motion for summary judgment in light of Albino v. Vaca, 747 F.3d 1162,

1 1166 (9th Cir. 2014). Defendant did, in fact, file a motion for summary judgment for
2 failure to exhaust administrative remedies, which presently is pending before the Court.
3 Plaintiff objected to the findings and recommendation on the ground the Magistrate
4 Judge did not also deny (and indeed did not address) the motion for summary
5 judgment. (ECF No. 95.) No other objections were filed.

6 In accordance with the provisions of 28 U.S.C. § 636(b)(1), the Court has
7 conducted a de novo review of this case. Having carefully reviewed the entire file, the
8 Court finds the September 16, 2014 findings and recommendation to be supported by
9 the record and by proper analysis. Plaintiff's objections do not raise an issue of law or
10 fact.

11 Accordingly, it is HEREBY ORDERED that:

- 12 1. The Court adopts the findings and recommendation to deny Defendant's
13 motion to dismiss for failure to state a claim (ECF No. 88), filed September
14 16, 2014, in full; and
- 15 2. Defendant's motion to dismiss (ECF No. 32), filed December 26, 2013, is
16 DENIED.

17 IT IS SO ORDERED.

18 Dated: March 6, 2015

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