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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DARRELL HARRIS,
Plaintiff,
v.
S. ESCAMILLA, et al.,
Defendants.

Case No. 1:13-cv-01354-LJO-MJS (PC)

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS TO GRANT
DEFENDANT’S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

(ECF NOS. 44, 64)

CASE TO REMAIN OPEN

Plaintiff is a state prisoner proceeding pro se 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.

On January 25, 2016, the magistrate judge issued findings and recommendations to grant Defendant Escamilla’s motion for partial summary judgment on Plaintiff’s Equal Protection claim as unexhausted. (ECF No. 64.) Plaintiff has filed his objections, and Defendant has filed a reply. (ECF Nos. 80, 85.)

Having carefully reviewed the entire file, including Plaintiff’s objections, the undersigned finds no reason to depart from the magistrate judge’s conclusion. Plaintiff’s Equal Protection claim is premised on Defendant Escamilla’s remark that Plaintiff is a “rag-head Black Muslim and a terrorist” during a January 2013 cell search. In opposition to Defendant Escamilla’s motion for partial summary judgment, Plaintiff was required to present evidence or argument supporting his contention that he did exhaust his

1 administrative remedies as to this claim or that those remedies were effectively
2 unavailable to him. The magistrate judge found that, though the evidence established
3 that Plaintiff was aware of the remark on the day it was allegedly made, Plaintiff's
4 grievance did not reference it, thus failing to put the prison on notice of Plaintiff's claim.
5 The magistrate judge also found that Plaintiff's argument that administrative remedies
6 were unavailable to him was unconvincing. In the objections now before the Court,
7 Plaintiff has not submitted any new or relevant argument sufficient to justify departure
8 from the magistrate judge's recommendation.

9 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule
10 304, the Court has conducted a de novo review of this case. Having carefully reviewed
11 the entire file, the Court finds the findings and recommendations to be supported by the
12 record and by proper analysis.

13 Accordingly, it is HEREBY ORDERED that:

- 14 1. The January 25, 2016, findings and recommendations (ECF No. 64) are
15 ADOPTED in full;
- 16 2. Defendant's July 1, 2015, motion for partial summary judgment (ECF No. 44)
17 is GRANTED;
- 18 3. Plaintiff's Equal Protection claim is dismissed for failure to exhaust
19 administrative remedies; and
- 20 4. This action is to remain open.

21 IT IS SO ORDERED.

22 Dated: April 15, 2016

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