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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MICHAEL KLEIN,

Plaintiff,

v.

B. MONTOYA, et al.,

Defendants.

Case No. 1:13-cv-01677-LJO-SKO (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, AND DENYING
MOTION FOR SUMMARY JUDGMENT,
MOTION FOR EXTENSION OF TIME, AND
MOTION TO STRIKE

(Docs. 24, 27, 35, and 42)

Plaintiff Michael Klein (“Plaintiff”), a former state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on October 17, 2013. This action for damages is proceeding against Defendants Montoya and Galvez (“Defendants”) for violating Plaintiff’s rights under the Eighth Amendment of the United States Constitution with respect to a clothed body search that allegedly involved sexual abuse.

This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. On October 28, 2015, the Magistrate Judge filed a Findings and Recommendations recommending that Defendants’ Motion for Summary Judgment raising the affirmative defense of exhaustion be denied, Plaintiff’s Motion for an Extension of Time be denied as moot, and Defendants’ Motion to Strike be denied as moot. The parties did not file Objections. Local Rule 304(b).

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1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a
2 *de novo* review of this case. Having carefully reviewed the entire file, the Court finds the Findings
3 and Recommendations to be supported by the record and by proper analysis.

4 Accordingly, IT IS HEREBY ORDERED that:

- 5 1. The Findings and Recommendations, filed on October 28, 2015, is adopted in full;
- 6 2. Defendants’ Motion for Summary Judgment, filed on May 19, 2015, is DENIED;
- 7 3. Plaintiff’s Motion for an Extension of Time, filed on July 9, 2015, is DENIED as
8 moot; and
- 9 4. Defendants’ Motion to Strike Plaintiff’s surreply, filed on July 28, 2015, is
10 DENIED as moot.

11 IT IS SO ORDERED.

12 Dated: November 17, 2015

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

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