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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRYAN E. RANSOM,

 Plaintiff,

 v.

McCABE, et al.,

 Defendants.

No. 1:13-cv-01779-DAD-GSA (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, GRANTING
MOTION FOR SUMMARY JUDGMENT IN
PART, AND REFERRING MOTION BACK
TO MAGISTRATE JUDGE IN PART

(Doc. Nos. 72, 79)

Plaintiff is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action 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 April 8, 2016, a motion for summary judgment was filed on behalf of defendants Clark, Dougherty, Faldon, Gill, Hayward, Herrera, Kaiser, McCabe, Molina, Quillen, Riley, Rocha, Rouch, Sao, and Torres. (Doc. No. 72.) The motion was based upon the contention that plaintiff had failed to exhaust his administrative remedies prior to filing suit as required. (*Id.*) On May 6, 2016, defendant Strome joined in that motion. (Doc. No. 76.)¹ Plaintiff filed no opposition to the motion. On August 23, 2016, the then assigned magistrate judge issued findings

¹ The court notes that defendant Brooks has been served but has not yet appeared in this action. (Doc. No. 39.)

1 and recommendations, recommending that defendants' motion for partial² summary judgment be
2 granted. (Doc. No. 79.)

3 Specifically, the magistrate judge found that defendants had not sought summary
4 judgment in their favor as to plaintiff's Eighth Amendment medical claims against defendants
5 Strome, Sao, Gill, and Rouch. (Doc. No. 79 at 9 n.6.) Moreover, the magistrate judge concluded
6 that defendants had also not moved for summary judgment with respect to plaintiff's state law
7 claims and, in fact, had presented no argument as to those state law claims. (Doc. No. 79 at 1, 12
8 n.7.) Accordingly, the findings and recommendations recommended that partial summary
9 judgment be granted and that the following claims presented by plaintiff's complaint be dismissed
10 without prejudice for failure to exhaust administrative remedies prior to filing suit: 1) the First
11 Amendment retaliation claim against defendants Dougherty, Faldon, Gill, Hayward, Herrera,
12 Kaiser, McCabe, Molina, Quillen, Riley, Rocha, Rouch, Sao, Torres and Strome; 2) the Eighth
13 Amendment conditions of confinement claim against Defendants Faldon, Hayward, McCabe,
14 Molina, Quillen, Riley, Torres and Rocha; and 3) the Eighth Amendment medical care claim
15 against Defendants Faldon, Dougherty, Herrera and Kaiser. (Id. at 12.) The findings and
16 recommendations provided for any party to file objections thereto within thirty days and replies to
17 any objections to be filed within ten days thereafter. (Id.)

18 On September 21, 2016, objections to the findings and recommendations were filed on
19 behalf of all defendants except defendant Strome. (Doc. No. 81.) Therein, defendants argued
20 that they had indeed asserted a failure to exhaust challenge as to plaintiff's state law claims in
21 their motion for summary judgment.³ Neither plaintiff nor defendant Strome filed objections to

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24 ² Although they did not specifically seek summary judgment in their favor as to all of plaintiff's
25 claims on the grounds argued, defendants did not label their motion as one seeking only partial
summary judgment. The failure to do so has resulted in significant confusion.

26 ³ Notably, defendants did not object to the magistrate judge's conclusion that they had not sought
27 summary judgment as to plaintiff's Eighth Amendment medical care claims against defendants
28 Strome, Sao, Gill, and Rouch. (See Doc. No. 79 at 9 n.6.) Accordingly, this action proceeds
with respect to those claims.

1 the findings and recommendations nor did they reply to the objections filed on behalf of the other
2 defendants, and the time in which to do so has passed.

3 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, the
4 undersigned has conducted a *de novo* review of this case. Having done so, the undersigned
5 observes that defendants' motion for summary judgment did include a discussion of California
6 law related to the administrative exhaustion requirement. (Doc. No. 72-1 at 13.) However,
7 defendants' motion failed to provide any analysis of the exhaustion requirement under state law.
8 (*Id.* at 14–20.) While the defendants may have intended to contest plaintiff's administrative
9 exhaustion of his state law claims through their motion for summary judgment, they did not
10 clearly do so. The undersigned agrees with the findings and recommendation and finds them
11 supported by the record and proper analysis. Those findings and recommendations will therefore
12 be adopted. However, the matter will be referred to the newly assigned magistrate judge for
13 consideration of whether plaintiff properly exhausted his state law claims prior to filing suit. In
14 doing so, the undersigned expresses no opinion regarding whether defendants have carried their
15 burden on summary judgment in this regard, or whether further briefing on this issue is necessary
16 and appropriate.

17 For all of the reasons set forth above:

- 18 1. The findings and recommendations issued on August 23, 2016 (Doc. No. 79) are
19 adopted;
- 20 2. Defendants' motion for partial summary judgment due to plaintiff's failure to exhaust
21 his administrative remedies prior to filing suit (Doc. No. 72) is granted in part and referred back
22 to the assigned magistrate judge for further proceedings in part;
- 23 3. The following claims are dismissed without prejudice as having not been exhausted
24 prior to filing suit:
 - 25 (a) Plaintiff's First Amendment retaliation claim against defendants Dougherty, Faldon,
26 Gill, Hayward, Herrera, Kaiser, McCabe, Molina, Quillen, Riley, Rocha, Rouch, Sao,
27 Torres, and Strome;

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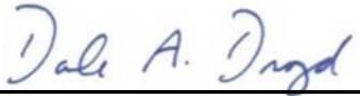
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(b) Plaintiff's Eighth Amendment conditions of confinement claim against defendants Faldon, Hayward, McCabe, Molina, Quillen, Riley, Torres, and Rocha; and

(c) Plaintiff's Eighth Amendment medical claim against defendants Faldon, Dougherty, Herrera, and Kaiser.

IT IS SO ORDERED.

Dated: November 8, 2016


UNITED STATES DISTRICT JUDGE