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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JUAN CARLOS MARTINEZ,
Plaintiff,
v.
P. FERNANDO, et al.,
Defendants.

No. 1:14-cv-00405-DAD-JLT (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, GRANTING
MOTIONS FOR SUMMARY JUDGMENT,
AND REFERRING BACK TO MAGISTRATE
JUDGE

(Doc. Nos. 70, 71, 85)

Plaintiff is a state prisoner represented by counsel in this action in which he alleges violation of his civil rights 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. Defendants filed motions for summary judgment on May 20, 2016, largely on the grounds that plaintiff had failed to exhaust his claims prior to filing suit. (Doc. Nos. 70, 71.) On February 7, 2017, the assigned magistrate judge issued findings and recommendations recommending summary judgment be granted and that all of plaintiff’s claims against defendants Songer, Bradford, Fernando, and Sagasta be dismissed. (Doc. No. 85.) The magistrate judge further recommended summary judgment be granted and plaintiff’s state law claims against defendant Butler be

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1 dismissed.¹ (Doc. No. 85.) The findings and recommendations gave the parties fourteen days to
2 file objections. (*Id.*) No objections have been filed, and the time in which to do so has passed.

3 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the undersigned has
4 conducted a *de novo* review of this case. Having carefully reviewed the entire file, the
5 undersigned finds the findings and recommendations to be supported by the record and by proper
6 analysis, save and except as follows. The screening order in this matter indicated that plaintiff
7 had stated cognizable claims under both federal and state law against defendants Songer,
8 Fernando, and Sagasta.² (Doc. No. 36.) Because state law claims remain pending in this case
9 against these three defendants, the court cannot dismiss them from the case at this juncture.
10 However, since all federal claims against these three defendants are dismissed by this order, the
11 matter is referred back to the assigned magistrate judge for findings and recommendations as to
12 whether the court should continue to exercise supplemental jurisdiction over the remaining state
13 law claims brought against defendants Songer, Fernando, and Sagasta or for further proceedings
14 with respect to those claims. *See Trustees of Constr. Indus. & Laborers Health and Welfare*
15 *Trust v. Desert Valley Landscape & Maint., Inc.*, 333 F.3d 923, 925–26 (9th Cir. 2003) (“To
16 decline jurisdiction under § 1367(c)(3), the district court must first identify the dismissal that
17 triggers the exercise of discretion and then explain how declining jurisdiction serves the
18 objectives of economy, convenience and fairness to the parties, and comity.”).

19 Given the foregoing:

20 1. The findings and recommendations issued on February 7, 2017 (Doc. No. 85) are
21 adopted in full, except insofar as they recommend dismissal of the state law claims against
22 defendants Songer, Fernando, and Sagasta;

23 2. Defendants’ motions for summary judgment (Doc. Nos. 70, 71) based on plaintiff’s
24 failure to exhaust available administrative remedies on his claims against defendants Songer,

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26 _____
27 ¹ Defendant Butler did not seek to have the federal claims against him dismissed.

28 ² No state law cause of action brought by plaintiff against defendant Bradford was found to be
cognizable. (Doc. No. 36.)

1 Fernando, Sagasta, and Bradford are granted and the federal claims against each of them are
2 dismissed without prejudice;

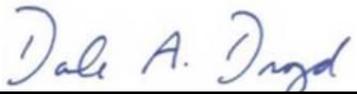
3 3. Defendants' motion for summary judgment on plaintiff's state law claim against
4 defendant Butler is granted due to plaintiff's failure to comply with the California Tort Claims
5 Act;

6 4. Plaintiff's state law claim against defendant Butler is dismissed; and

7 5. The action is referred back to the magistrate judge for further proceedings consistent
8 with this order.

9 IT IS SO ORDERED.

10 Dated: March 6, 2017

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13 UNITED STATES DISTRICT JUDGE
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