

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

EUGENIO LUIS NOGUERAS,  
Plaintiff,  
v.  
AUGUSTINA OJUKWU,  
Defendant.

Case No. 1:14-cv-00470-LJO-SKO (PC)  
FINDINGS AND RECOMMENDATIONS  
RECOMMENDING DEFENDANT’S  
MOTION FOR SUMMARY JUDGMENT  
FOR FAILURE TO EXHAUST BE DENIED,  
WITH PREJUDICE, ON THE GROUND  
THAT PLAINTIFF WAS NOT A PRISONER  
WHEN HE FILED SUIT  
  
(Doc. 37)  
  
OBJECTION DEADLINE: FIFTEEN DAYS

**I. Procedural Background**

Plaintiff Eugenio Luis Nogueras (“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 August 21, 2012. This action for damages is proceeding against Defendant Ojukwu (“Defendant”) for violating Plaintiff’s rights under the Eighth Amendment of the United States Constitution. Plaintiff’s claim arises from events which occurred at Kern Valley State Prison in Delano, California.

On August 4, 2015, Defendant filed a motion for summary judgment based on Plaintiff’s failure to exhaust the available administrative remedies in compliance with 42 U.S.C. § 1997e(a). Fed. R. Civ. P. 56(a); *Albino v. Baca*, 747 F.3d 1162, 1166 (9th Cir. 2014) (en banc), *cert. denied*,

1 135 S.Ct. 403 (2014). (Doc. 37.) The motion has been submitted on the record without oral  
2 argument pursuant to Local Rule 230(l).<sup>1</sup>

3 **II. Discussion and Recommendation**

4 Section 1997e(a) of the the Prison Litigation Reform Act of 1995 provides that “[n]o  
5 action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any other  
6 Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such  
7 administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). A “prisoner” is  
8 defined as “any person incarcerated or detained in any facility who is accused of, convicted of,  
9 sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions  
10 of parole, probation, pretrial release, or diversionary program.” 42 U.S.C. § 1997e(h). Individuals  
11 who are former prisoners at the time they file suit are not subject to section 1997e(a)’s exhaustion  
12 requirement. *Talamantes v. Leyva*, 575 F.3d 1021, 1024 (9th Cir. 2009) (interpreting definition of  
13 prisoner in 42 U.S.C. § 1997e(h)); *see also Page v. Torrey*, 201 F.3d 1136, 1140 (9th Cir. 2000)  
14 (civil detainees are not prisoners within the definition of section 1997e)).

15 Plaintiff filed this action on August 21, 2012, when he was no longer incarcerated. (Docs.  
16 1, 3.) As a result, Plaintiff was not required to comply with section 1997e(a)’s exhaustion  
17 requirement, and Defendant’s motion for summary judgment for failure to exhaust fails as a matter  
18 of law. *Talamantes*, 575 F.3d at 1024.

19 Accordingly, the Court HEREBY RECOMMENDS that Defendant’s motion for summary  
20 judgment, filed on August 4, 2015, be DENIED, with prejudice.

21 These Findings and Recommendations will be submitted to the United States District  
22 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within  
23 **fifteen (15) days** after being served with these Findings and Recommendations, the parties may  
24 file written objections with the Court. Local Rule 304(b). The document should be captioned  
25 “Objections to Magistrate Judge’s Findings and Recommendations.” Responses, if any, are due

---

26 <sup>1</sup> Plaintiff was provided with contemporaneous notice of the requirements for opposing a summary judgment motion  
27 for failure to exhaust administrative remedies. *Stratton v. Buck*, 697 F.3d 1004, 1008 (9th Cir. 2012); *Woods v. Carey*,  
28 684 F.3d 934, 939-41 (9th Cir. 2012); *Rand v. Rowland*, 154 F.3d 952, 960-61 (9th Cir. 1998). (Doc. 37.)

1 within **ten (10) days** from the date the objections are filed. Local Rule 304(d). The parties are  
2 advised that failure to file objections within the specified time may result in the waiver of rights on  
3 appeal. *Wilkerson*, 772 F.3d at 838-39 (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir.  
4 1991)).

5  
6 IT IS SO ORDERED.

7 Dated: September 1, 2015

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28