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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHARLES T. DAVIS,
Plaintiff,
v.
A. MOLINA, et al.,
Defendants.

Case No. 1:14-cv-01554 LJO DLB PC
ORDER ADOPTING FINDINGS AND
RECOMMENDATION REGARDING
DEFENDANT HOSMAN’S MOTION FOR
SUMMARY JUDGMENT AND
PLAINTIFF’S MOTION UNDER RULE
56(d)
[ECF Nos. 26, 29, 34]

Plaintiff Charles T. Davis (“Plaintiff”) is a state prisoner proceeding pro se in this civil action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action in the Fresno County Superior Court on June 13, 2013. On October 2, 2014, the case was removed to this Court. This case is proceeding against Defendants Molina and Hosman on a claim of retaliation in violation of the First Amendment.

On March 11, 2016, the Magistrate Judge issued Findings and Recommendations that recommended Defendant Hosman’s Motion for Summary Judgment be GRANTED; the claim against Defendant Hosman be DISMISSED without prejudice for failure to exhaust; and Defendant Hosman be DISMISSED from the action. The Magistrate Judge further recommended that Plaintiff’s motion under Rule 56(d) be DENIED. The Findings and Recommendations were served on all parties and contained notice that any objections were to be filed within thirty (30) days. On March 28, 2016, Plaintiff filed objections. Defendant did not

1 file objections or a reply to Plaintiff's objections.

2 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted
3 a de novo review of this case. The Magistrate Judge correctly determined that Plaintiff failed to
4 exhaust his administrative remedies as to Defendant Hosman since Plaintiff never identified
5 Hosman or complained about Hosman's actions. Upon review of the evidence, including
6 Plaintiff's reference to Attachment 1 at pp. 2, 6, and 7, there is no evidence of Hosman being
7 named in his appeal. In addition, the Magistrate Judge correctly determined that Plaintiff's
8 motion under Fed. R. Civ. P. 56(d) to defer consideration of the motion for summary judgment is
9 without merit. Having carefully reviewed the entire file, the Court finds that the Findings and
10 Recommendations are supported by the record and by proper analysis.

11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. The Findings and Recommendations, filed March 11, 2016, are ADOPTED in full;
- 13 2. Defendant Hosman's Motion for Summary Judgment is GRANTED;
- 14 3. Defendant Hosman and the claim against Defendant Hosman are DISMISSED
15 WITHOUT PREJUDICE;
- 16 4. Plaintiff's Rule 56(d) motion is DENIED; and
- 17 5. The matter is REFERRED BACK to the Magistrate Judge for further proceedings.

18
19 IT IS SO ORDERED.

20 Dated: April 15, 2016

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