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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHARLES W. WINDHAM,
Plaintiff,
v.
M. MARIN, et al.,
Defendants.

No. 1:14-cv-01636-DAD-BAM

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DENYING
DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT, AND REFERRING MATTER
FOR EVIDENTIARY HEARING

(Doc. Nos. 49, 136)

Plaintiff Charles W. Windham is a state prisoner proceeding pro se and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on plaintiff's Eighth Amendment claims of excessive use of force against defendants Marin, Uribe, Rasley, Contreras, Capano, Rubio, and Doe #1, and for deliberate indifference to serious medical needs against defendants Navarro, Morales, Marin, and Shiver. 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 February 1, 2018, the assigned magistrate judge issued findings and recommendations recommending that defendants' motion for summary judgment on the grounds that plaintiff had failed to exhaust his administrative remedies prior to filing suit be denied without prejudice to an evidentiary hearing being held in order to resolve factual disputes concerning exhaustion. (Doc. No. 136.) The findings and recommendations were served on the parties and contained notice

1 that any objections must be filed within fourteen days after service. (*Id.* at 9–10.) More than
2 fourteen days have passed, and no objections have been filed.

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 and carefully reviewed the entire file. The undersigned
5 concludes that the findings and recommendations are supported by the record and by proper
6 analysis.

7 Given the foregoing:

- 8 1. The findings and recommendations issued on February 1, 2018 (Doc. No. 136) are
9 adopted in full;
- 10 2. Defendants’ motion for summary judgment (Doc. No. 49) is denied; and
- 11 3. This matter is referred back to the magistrate judge for the purpose of setting and
12 conducting an evidentiary hearing on the issue of exhaustion and, if necessary, further
13 proceedings on plaintiff’s claims.

14 IT IS SO ORDERED.

15 Dated: March 6, 2018

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18 UNITED STATES DISTRICT JUDGE
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