

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
FOR THE EASTERN DISTRICT OF CALIFORNIA

THURMAN GAINES,
Plaintiff,
v.
CALIFORNIA DEPT. OF CORRECTIONS,
et al.,
Defendants.

No. 1:15-cv-00587-JLT-SAB (PC)
ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
ACTION WITHOUT PREJUDICE FOR
FAILURE TO EXHAUST
ADMINISTRATIVE REMEDIES
(Doc. 138)

Plaintiff Thurman Gaines is a state prisoner who brings this 42 U.S.C. § 1983 civil rights action pro se. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(1)(B) and Local Rule 302.

Plaintiff filed this suit in 2015 alleging deliberate indifference by Defendant Dr. E. Horowitz and others. (Doc. 1.) On August 31, 2021, following an evidentiary hearing, the assigned magistrate judge issued findings and recommendations that the action be dismissed without prejudice for Plaintiff’s failure to exhaust administrative remedies. (Doc. 138.) The findings and recommendations were served on the parties and contained notice that objections were due within thirty days. (*Id.* at 22.)

Plaintiff filed objections on September 30, 2021, and Defendant filed a response on

1 October 14, 2021. (Docs. 139, 140.) Therein, Plaintiff objected to the magistrate judge's analysis
2 of testimony provided at the evidentiary hearing. (Doc. 139.)

3 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a
4 *de novo* review of the case. Having carefully reviewed the entire file, including Plaintiff's
5 objections and Defendant's response, the Court concludes that the magistrate judge's findings and
6 recommendations are supported by the record and by proper analysis. Accordingly,

- 7 1. The findings and recommendations issued on August 31, 2021, (Doc. 138),
8 are ADOPTED in full; and
- 9 2. The instant action is DISMISSED without prejudice for Plaintiff's failure to
10 exhaust administrative remedies; and
- 11 3. The Clerk of the Court is DIRECTED to terminate all pending motions and to
12 close this case.

13
14 IT IS SO ORDERED.

15 Dated: January 20, 2022


UNITED STATES DISTRICT JUDGE

16
17
18
19
20
21
22
23
24
25
26
27
28