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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LAKEITH L. MCCOY,  
Plaintiff,  
v.  
A. HOLGUIN, et al.,  
Defendants.

No. 1:15-cv-00768-DAD-MJS

ORDER ADOPTING IN PART FINDINGS  
AND RECOMMENDATIONS AND  
GRANTING IN PART DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT

(Doc. No. 91)

Plaintiff is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action brought 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 of the United States District Court for the Eastern District of California.

On January 19, 2018, the assigned magistrate judge issued findings and recommendations recommending that defendants' July 17, 2017 motion for summary judgment (Doc. No. 75) be to granted in part because plaintiff had failed to exhaust his administrative remedies with regard to certain defendants prior to filing suit. (Doc. No. 75.) Specifically, the magistrate judge recommended that summary judgment be granted in favor of defendants Holland, Kilmer, Santa Maria, Bennett, and DeLuna. The magistrate judge recommended that defendants' motion be denied in all other respects. (*Id.*)

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1 Plaintiff filed objections to those findings and recommendations in which he argued, in  
2 part, that it is undisputed that he did exhaust his claim against defendant Bennett. (Doc. No. 92 at  
3 3.) Additionally, plaintiff objects to the findings that he did not exhaust administrative remedies  
4 as to defendants Holland, Kilmer, Santa Maria, and DeLuna, arguing that the inmate grievance  
5 form failed to provide him with sufficient space to do so. (*Id.* at 4–5.) Plaintiff also argues that in  
6 his inmate appeal, he requested the identities of the staff members who oversaw the buildings  
7 where these alleged events took place, and that request was sufficient to exhaust his  
8 administrative remedies as to defendants Holland, Kilmer, Santa Maria, and DeLuna. (*Id.* at 5–  
9 6.) No other objections have been filed and the time for doing so has passed.

10 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a  
11 *de novo* review of this case. However, upon review of the entire file, it appears that defendants  
12 have conceded that plaintiff did, in fact, exhaust his administrative remedies as to his claim  
13 against defendant Bennett. (*See* Doc. No. 90 at 9, fn. 1.) In this regard, defendants state that  
14 “Nurse Bennett therefore withdraws her request for summary judgment for failure to exhaust  
15 administrative remedies.” (*Id.*) Accordingly, the granting of summary judgment in favor of  
16 defendant Bennett is not appropriate, and the court declines to adopt that aspect of the magistrate  
17 judge’s findings and recommendation. (Doc. No. 91 at 12.)

18 Having carefully reviewed the entire file, the court finds the remainder of the findings and  
19 recommendations to be supported by the record and by proper analysis. The granting of summary  
20 judgment in favor of defendants Holland, Kilmer, Santa Maria, and DeLuna is appropriate in light  
21 of the evidence presented on summary judgment. Plaintiff’s objections to the findings and  
22 recommendations with respect to these defendants do not raise any issue of law or fact that would  
23 suggest otherwise. Though plaintiff requested the identities of the staff members who oversaw  
24 the building where the alleged events took place, he did not make any allegations in his inmate  
25 grievance that additional individuals witnessed the incident but failed to intervene. For that  
26 reason, claims against defendants Holland, Kilmer, Santa Maria, and DeLuna must be dismissed  
27 due to plaintiff’s failure to exhaust administrative remedies prior to filing suit.

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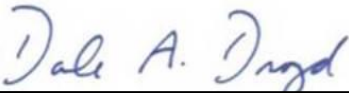
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Accordingly,

1. The court adopts the findings and recommendations filed January 19, 2018 (Doc. No. 91) in part;
2. Defendants’ motion for summary judgment (Doc. No. 75) is granted in part and denied in part as follows:
  - a. Summary judgment is granted in favor of defendants Holland, Kilmer, Santa Maria, and DeLuna and they are terminated from this action;
  - b. Defendants’ motion for summary judgment (Doc. No. 75) is denied as to defendant Bennett and in all other respects.

IT IS SO ORDERED.

Dated: March 24, 2018

  
UNITED STATES DISTRICT JUDGE