

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

DAMIEN T. DOSTER,
Plaintiff,
v.
JEFFREY A. BEARD, et al.,
Defendants.

No. 1:15-cv-01415-DAD-GSA

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS
(Doc. No. 56)

Plaintiff Damien T. Doster is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action brought pursuant to 42 U.S.C. § 1983. This action proceeds on plaintiff's first amended complaint against defendants Chief Deputy Warden F. Vasquez, Yard Captain P. Llamas, Sergeant Leon, and Maintenance Engineer Pavich in which he alleges the defendants subjected him to unlawful conditions of confinement in violation of the Eighth Amendment. (Doc. No. 13.) This action was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On July 24, 2017, the assigned magistrate judge issued findings and recommendations, recommending that defendants' motion for summary judgment based on plaintiff's failure to exhaust his administrative remedies prior to filing suit be granted in part and denied in part. (Doc. No. 56.) The parties were provided fourteen days in which to file objections to those

////

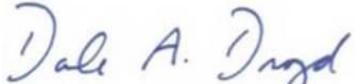
1 findings and recommendations. (*Id.*) To date, neither party has filed objections, and the time for
2 doing so has passed.

3 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, this
4 court has conducted a *de novo* review of this case. Having carefully reviewed the entire file, the
5 court finds the findings and recommendations to be supported by the record and proper analysis.
6 Accordingly,

- 7 1. Defendants' motion for summary judgment is granted as to plaintiff's claims
8 concerning the alleged lack of cold water, plaintiff's toilet backing up and
9 overflowing, lack of cleaning supplies, and his related negligence claims;
- 10 2. Defendants' motion for summary judgment is denied as to plaintiff's claims
11 against defendants Pavich, Vasquez, Leon, and Llamas concerning the alleged
12 deprivation of hot water in his cell and shower, and his related negligence claims;
- 13 3. This case now proceeds only on plaintiff's claim concerning deprivation of hot
14 water against defendants Pavich, Vasquez, Leon, and Llamas, and his related
15 negligence claims;
- 16 4. All remaining claims are dismissed without prejudice due to plaintiff's failure to
17 exhaust his administrative remedies prior to filing suit as required; and
- 18 5. This case is referred back to the assigned magistrate judge for further proceedings.

19 IT IS SO ORDERED.

20 Dated: September 25, 2017

21 
22 _____
23 UNITED STATES DISTRICT JUDGE
24
25
26
27
28