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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CLIFTON HUTCHINS, JR.,

Plaintiff,

v.

BILL LOCKYER, et al.,

Defendants.

No. 1:15-cv-01537-DAD-JDP (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND GRANTING IN
PART DEFENDANT JOHAL'S MOTION
FOR SUMMARY JUDGMENT

(Doc. Nos. 41, 53)

Plaintiff Clifton Hutchins, Jr. is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. 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 March 6, 2018, defendant A. Johal moved for summary judgment under Federal Rule of Civil Procedure 56, arguing that plaintiff failed to exhaust his administrative remedies prior to filing suit as required. (Doc. No. 41.) On April 15, 2019, the assigned magistrate judge issued findings and recommendations, recommending that defendant Johal's motion for summary judgment be granted in part and denied in part after finding that plaintiff had failed to exhaust his administrative remedies concerning his First Amendment retaliation claim but had exhausted those administrative remedies with respect to his Eighth Amendment medical indifference claim. (Doc. No. 53.) The findings and recommendations were served on the parties and contained notice that any objections thereto were to be filed within fourteen days after service. (*Id.* at 8.)

1 On April 19, 2019, defendant Johal filed a notice of non-opposition, stating that she did not object
2 to the magistrate judge's findings and recommendations. (Doc. No. 54.) No objections have
3 been filed by plaintiff and the time for doing so has now passed.

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

7 Accordingly:

- 8 1. The findings and recommendations issued on April 15, 2019 (Doc. No. 53) are
9 adopted in full;
- 10 2. Defendant Johal's motion for summary judgment (Doc. No. 41) is granted in part and
11 denied in part without prejudice;
 - 12 a. Summary judgment is granted in favor of defendant as to plaintiff's First
13 Amendment retaliation claim due to plaintiff's failure to exhaust his
14 administrative remedies prior to filing suit;
 - 15 b. Summary judgment is denied as to plaintiff's Eighth Amendment indifference
16 to serious medical needs claim; and
- 17 3. This case is referred back to the assigned magistrate judge for further proceedings.

18 IT IS SO ORDERED.

19 Dated: June 4, 2019

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22 UNITED STATES DISTRICT JUDGE
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