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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

SHANNON WILLIAMS,	)	Case No.: 1:16-cv-00764-AWI-SAB (PC)
	)	
Plaintiff,	)	
	)	<b>ORDER DECLINING TO ADOPT FINDINGS AND RECOMMENDATIONS BASED ON PLAINTIFF’S OBJECTIONS, AND DENYING DEFENDANT VERNA’S MOTION FOR SUMMARY JUDGMENT FOR FAILURE TO EXHAUST THE ADMINISTRATIVE REMEDIES</b>
v.	)	
ANTHONY VERNA, et al.,	)	
	)	
Defendants.	)	
	)	
	)	[ECF Nos. 29, 33, 35]

Plaintiff Shannon Williams, a prisoner in the custody of the Federal Bureau of Prisons (“BOP”) proceeding pro se filed the instant civil rights action pursuant to Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971) on June 2, 2016. The 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 22, 2018, the Magistrate Judge filed a Findings and Recommendation recommending that Defendant Verna’s motion for summary judgment for Plaintiff’s failure to exhaust the administrative remedies be granted, and the retaliation claim against him be dismissed. The Findings and Recommendations were served on the parties and contained notice that objections were to be filed within thirty days. Plaintiff filed objections on April 9, 2018. See Local Rule 304(b). Defendant did not file a response. See Local Rule 304(d).

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1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a *de*  
2 *novo* review of this case. Having carefully reviewed the entire file, and Plaintiff’s objections, the  
3 Court respectfully finds the Findings and Recommendations cannot be adopted based on the evidence  
4 submitted by Plaintiff.

5 In his objections, Plaintiff states that “[a]dministrative remedy 849029R1, surely put the BOP  
6 administrative officials” on notice “of the problem of Verna retaliating against the Plaintiff.” (ECF  
7 No. 35 at 2, Ex. A.) Defendant did not address this appeal in his motion for summary judgment  
8 beyond attachment of the BOP printout of Plaintiff’s administrative remedies from May 2014 to June  
9 2016. The printout indicates that appeal number 849029 concerned a “DHO HEARING” and it  
10 appears to have been denied and closed. (Vickers Decl., Ex. 2, ECF No. 29-3.)

11 Plaintiff has submitted a copy of appeal number 849029 which appears on its face to allege the  
12 same retaliatory allegations against Defendant Verna as set forth in the operative complaint.  
13 Defendant does not dispute Plaintiff’s claim and has presented no evidence to determine such appeal  
14 does not exhaust the administrative remedies. Construing all facts in favor of the non-moving party  
15 and based on the evidence submitted by Plaintiff that is not addressed or disputed by Defendant, the  
16 Court cannot determine at this time that Defendant is entitled to summary judgment based on  
17 Plaintiff’s failure to exhaust the administrative remedies. Therefore, Defendant Verna’s motion will  
18 be denied.

19 Accordingly, IT IS HEREBY ORDERED that:

- 20 1. The Findings and Recommendations, filed on March 22, 2018 (Doc. No. 33) are not  
21 adopted; and
- 22 2. Defendant Verna’s motion for summary judgment (Doc. No. 29) is denied without  
23 prejudice for the reasons stated herein.

24  
25 IT IS SO ORDERED.

26 Dated: September 7, 2018

27   
28 SENIOR DISTRICT JUDGE