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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JORGE CORENA,

Plaintiff,

v.

RODRIGUEZ, et al.,

Defendants.

Case No. 1:16-cv-01025-LJO-EPG (PC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS

(ECF NOS. 51 & 89)

Jorge Corena (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action filed 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. This action proceeds on Plaintiff’s claims “against defendants Rodriguez, Cerveza, and Doe for excessive force in violation of the Eighth Amendment, against the Doe defendant for failure to protect in violation of the Eighth Amendment, and against defendants Rodriguez and Doe for retaliation in violation of the First Amendment.” (ECF No. 26, p. 2).

On October 26, 2018, Defendant Rodriguez filed a motion for summary judgment based on the alleged failure of Plaintiff to exhaust available administrative remedies prior to filing suit, as required by the Prison Litigation Reform Act (“PLRA”), 42 U.S.C. § 1997e(a). (ECF No. 51). Plaintiff filed a declaration opposing the motion for summary judgment on November 19, 2018, (ECF No. 59), along with a request for judicial notice with various exhibits attached (ECF. No. 58). Defendant Rodriguez filed a reply on November 26, 2018. (ECF No. 61).

1 Plaintiff, without first seeking Court approval, filed a response to the reply on December 6,  
2 2018. (ECF No. 63). Magistrate Judge Erica P. Grosjean held a hearing on the motion on  
3 December 19, 2018. (ECF No. 67). Judge Grosjean then set an evidentiary hearing to  
4 determine certain disputes of fact (ECF Nos. 69 & 72). On February 27, 2019, Plaintiff filed  
5 another request for judicial notice. (ECF No. 82). Judge Grosjean held the evidentiary hearing  
6 on March 27, 2019. (ECF No. 87).

7 On April 18, 2019, Judge Grosjean entered findings and recommendations,  
8 recommending that:

- 9 1. Defendant Rodriguez's motion for summary  
10 judgment (ECF No. 51) be granted in part.
- 11 2. The claim against Defendant Rodriguez based on  
12 the alleged July 15, 2014 excessive force incident  
13 and the claim for retaliation against Defendant  
14 Rodriguez based on that same incident be  
15 dismissed.
- 16 3. That Plaintiff be deemed to have exhausted his  
17 available administrative remedies as to the  
18 excessive force claim against Defendant  
19 Rodriguez based on the alleged July 9, 2014  
20 excessive force incident

21 (ECF No. 89, p. 21).

22 The parties were provided an opportunity to file objections to the findings and  
23 recommendations. The deadline for filing objections has passed, and neither party has objected  
24 to the findings and recommendations. However, Plaintiff did file what appears to be an  
25 unauthorized supplement brief following the evidentiary hearing (ECF No. 93).

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

Accordingly, THE COURT HEREBY ORDERS that:

1. The findings and recommendations issued by the magistrate judge on April 18,  
2019, are ADOPTED in full.

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- 2. Defendant Rodriguez’s motion for summary judgment (ECF No. 51) is granted in part.
- 3. The claim against Defendant Rodriguez based on the alleged July 15, 2014 excessive force incident and the claim for retaliation against Defendant Rodriguez based on that same incident is dismissed.
- 4. Plaintiff is deemed to have exhausted his available administrative remedies as to the excessive force claim against Defendant Rodriguez based on the alleged July 9, 2014 excessive force incident.

IT IS SO ORDERED.

Dated: May 15, 2019

/s/ Lawrence J. O’Neill  
UNITED STATES CHIEF DISTRICT JUDGE