

1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
2 de novo review of this case. Having carefully reviewed the entire file, including plaintiff's
3 objections to the findings and recommendations, the court finds the findings and
4 recommendations to be supported by the record and by proper analysis.

5 The pending findings and recommendations conclude that plaintiff failed to exhaust his
6 administrative remedies prior to filing suit with regard to his claim for deliberate indifference to
7 his serious medical needs. (Doc. No. 50 at 12.) Specifically, plaintiff submitted two health care
8 inmate appeals related to his requests to be assigned to a lower bunk to accommodate his disabled
9 leg. (Id.) Plaintiff's first health care appeal, SATF-HC-16063382, which referenced plaintiff
10 falling from his assigned upper bunk and requested assignment to a bottom bunk, was rejected on
11 June 3, 2016, however, a "rejection decision does not exhaust administrative remedies." (Id. at 8–
12 9; see also Cal. Code Regs. tit. 15, §§ 3084.1(b), 3084.7(d)(3).) Plaintiff did not attempt to cure
13 the defects in his first inmate appeal that resulted in its rejection and no further submissions of
14 that inmate appeal were made by plaintiff. (Doc. No. 50 at 9.) Thus, the magistrate judge found
15 that plaintiff failed to exhaust his administrative remedies on his first health care related inmate
16 appeal. Plaintiff's second health care inmate appeal, SATF-HC-16063767, which referenced
17 plaintiff's second fall from his upper bunk and requested a lower-tier and bunk chrono, was
18 granted at the second level of review on September 21, 2016, but plaintiff submitted that decision
19 to the third level for review on October 5, 2016. (Id. at 9, 11–12). While plaintiff's inmate
20 appeal to the third level was pending, he filed his original complaint in this action on December
21 14, 2016. Plaintiff's inmate appeal was denied at the third level on January 17, 2017—after he
22 filed his original complaint in this action. (Id.) Accordingly, the magistrate judge found that
23 plaintiff also failed to exhaust his administrative remedies prior to filing suit with regards to his
24 second health care inmate appeal.

25 In his objections to the pending findings and recommendations, plaintiff asserts that
26 although he submitted his second health care inmate appeal to the third level of review, he was
27 not dissatisfied with the decision granting his requests at the second level of review. (Doc. No.
28 51 at ¶¶ 5, 8.) Rather, plaintiff contends that "[t]he statement to the director/third level was

1 seeking to inform the administration that plaintiff suffered from a permanent disability” and he
2 was “making a statement to the director’s level seeking clarity . . .” (Id. at ¶ 8.) As noted by the
3 magistrate judge, however, after receiving notice that his requests to be assigned to a bottom bunk
4 on the ground floor were granted by the institutional (second) level of review, plaintiff submitted
5 a CDCR 602 HC appeal form for a third level review. (Doc. No. 50 at 11–12.) This form
6 directed plaintiff to explain why he is dissatisfied with the institutional level response, and he
7 stated that “temporary lower bunk lower tier chrono has been granted. I suffer from severe nerve
8 and musle [sic] damage which is permanent a temporary solution is not what this situation calls
9 for when I suffer from permanent damages.” (Doc. No. 39–4 at 26.) The undersigned agrees
10 with the magistrate judge’s conclusion that “the evidence before the Court establishes that
11 Plaintiff was not satisfied with the Institutional, or second, level grant of relief and that there was
12 some relief available at the Headquarters’, or third, level of review. (Doc. No. 50 at 12.)
13 Plaintiff’s inmate appeal was denied at the third level on January 17, 2017, and it was at that point
14 he had exhausted his administrative remedies. (Doc. No. 39–4 at 3, ¶ 9.) Because plaintiff filed
15 his original complaint in this civil action on December 14, 2016, the undersigned agrees with the
16 magistrate judge’s finding that plaintiff failed to exhaust his administrative remedies prior to
17 filing suit as is required.

18 Accordingly,

- 19 1. The findings and recommendations issued on October 31, 2019 (Doc. No. 50) are
20 adopted in full;
- 21 2. Defendants’ motion for summary judgment based upon plaintiff’s failure to
22 exhaust his administrative remedies, with respect to the claims presented in this
23 action, prior to filing suit as required (Doc. No. 39) is granted;
- 24 3. This case is dismissed without prejudice;
- 25 4. The Clerk of the Court is directed to close this case.

26 IT IS SO ORDERED.

27 Dated: December 16, 2019

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UNITED STATES DISTRICT JUDGE