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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

WAYNE JEROME ROBERTSON,  
Plaintiff,  
v.  
D. GARCIA, et al.,  
Defendants.

No. 1:17-cv-01022-DAD-BAM (PC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS

(Doc. Nos. 36, 56)

Plaintiff Wayne Jerome Robertson is a state prisoner proceeding *pro se* in this civil rights action filed 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 May 9, 2022, the assigned magistrate judge issued findings and recommendations, recommending the following: (1) that defendants’ motion for partial summary judgment (Doc. No. 36) be granted; (2) that defendant Jones be dismissed from this action due to plaintiff’s failure to exhaust his administrative remedies as to his claims involving that defendant prior to filing suit; (3) that plaintiff’s claims against defendant Garcia alleging the use of excessive force, other than the use of OC spray, be dismissed also due to plaintiff’s failure to exhaust his administrative remedies as to those claims prior to filing suit; and (4) that this action proceed only on plaintiff’s claim brought against defendant Garcia for excessive use of force in violation of the

1 Eighth Amendment for spraying plaintiff with OC spray on January 24, 2017. (Doc. No. 56.)  
2 Those findings and recommendations were served on the parties and contained notice that any  
3 objections thereto were to be filed within fourteen (14) days after service. (*Id.* at 12–13.) To  
4 date, no objections have been filed with the court and the time in which to do so has since passed.

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

8 Accordingly,

- 9 1. The findings and recommendations issued on May 9, 2022 (Doc. No. 56) are  
10 adopted;
- 11 2. Defendants’ motion for partial summary judgment (Doc. No. 36) is granted;
- 12 3. Defendant Jones is dismissed from this action due to plaintiff’s failure to exhaust  
13 his administrative remedies as to his claims involving that defendant prior to filing  
14 suit;
- 15 4. Plaintiff’s claims against defendant Garcia regarding the use of excessive force,  
16 other than the use of OC spray, are dismissed due to plaintiff’s failure to exhaust  
17 his administrative remedies as to those claims prior to filing suit;
- 18 5. This action shall proceed only on plaintiff’s claim against defendant Garcia for  
19 excessive force in violation of the Eighth Amendment for spraying plaintiff with  
20 OC spray on January 24, 2017; and
- 21 6. This matter is referred back to the assigned magistrate judge for further  
22 proceedings consistent with this order.

23 IT IS SO ORDERED.

24 Dated: June 14, 2022

25   
26 UNITED STATES DISTRICT JUDGE