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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JONATHAN GRIGSBY,

Plaintiff,

v.

M. HERNANDEZ,

Defendant.

No. 1:17-cv-01384-DAD-JLT (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND GRANTING
DEFENDANT’S MOTION FOR SUMMARY
JUDGMENT

(Doc. No. 61, 74)

Plaintiff Jonathan Grisby is a former state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action 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.

On May 17, 2021, the assigned magistrate judge issued findings and recommendations, recommending that defendant’s motion for summary judgment be granted due to plaintiff’s failure to exhaust his administrative remedies prior to filing suit. In reaching that conclusion, the magistrate judge found that although plaintiff did exhaust his inmate grievance # KVSP-O-17-01027 , through the third level of review, with respect to his claim of the denial of family visitation brought in this action, that inmate grievance did not include plaintiff’s claim against defendant Hernandez for alleged retaliation in violation of the First Amendment—the sole claim remaining claim in this action and the only which the court found to be cognizable. (Doc. No.

1 74.) The pending findings and recommendations were served on plaintiff and contained notice
2 that any objections thereto were to be filed within fourteen (14) days after service and that any
3 response to the objections were to be filed within fourteen (14) days after service of any
4 objections. (*Id.* at 7–8.) On June 7, 2021, plaintiff’s objections to the findings and
5 recommendations were docketed, and on June 10, 2021, defendant filed a response thereto.
6 (Doc. Nos. 75, 76.)

7 In his objections, plaintiff appears to argue that his retaliation claim brought against
8 defendant Hernandez is subsumed in his inmate grievance # KVSP-O-17-01027. (Doc. No. 75 at
9 1–4.) In support of his position, plaintiff has attached the appeal log for all three levels of review
10 of his grievance # KVSP-O-17-01027. (*Id.*) Plaintiff also expresses his frustration generally at
11 the concept of his case being dismissed due to failure to exhaust administrative remedies after so
12 many years of litigation in this case. (*Id.*)

13 Defendant’s response asserts that the appeal log for inmate grievance # KVSP-O-17-
14 01027 demonstrates that plaintiff’s retaliation claim was not included in or addressed as part of
15 that inmate grievance and thus, plaintiff has failed to raise a genuine dispute of material fact
16 regarding his failure to exhaust administrative remedies with respect to that claim prior to
17 bringing suit. (Doc. No. 76.)

18 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
19 *de novo* review of the case. Having carefully reviewed the entire file, including plaintiff’s
20 objections and defendant’s response, the court concludes that the findings and recommendations
21 are supported by the record and by proper analysis.

22 The court concludes that the pending findings and recommendations correctly outlined
23 that inmate grievance # KVSP-O-17-01027 concerned only the denial of plaintiff’s family
24 visitation application, and his challenges to the purportedly mistaken history of violence and
25 escape. (Doc. Nos. 74 at 7; 75 at 5–15.) That inmate grievance did not allege any engagement in
26 protected activity by plaintiff or retaliation by defendant. Therefore, plaintiff did not exhaust his
27 administrative remedies as to his retaliation claim brought in this civil action against defendant
28 Hernandez. Thus, there are no genuine disputed issues of material fact related to plaintiff’s

1 exhaustion of administrative remedies as to that claim, and defendant is entitled to judgment as a
2 matter of law.

3 Accordingly,

- 4 1. The findings and recommendations filed on May 17, 2021 (Doc. No. 74) are
5 adopted in full;
- 6 2. The Defendant's motion for summary judgment (Doc. No. 61) is granted due to
7 plaintiff's failure to exhaust his administrative remedies prior to filing suit with
8 respect to his sole remaining claim of retaliation; and
- 9 3. The Clerk of the Court is directed to close this case.

10 IT IS SO ORDERED.

11 Dated: July 19, 2021

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14 UNITED STATES DISTRICT JUDGE
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