## 1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF CALIFORNIA 10 11 DARNELL DUKES, Case No. 1:18-cv-00288-LJO-BAM (PC) 12 Plaintiff. ORDER OVERRULING PLAINTIFF'S **UNTIMELY OBJECTIONS TO** 13 MAGISTRATE JUDGE'S FINDINGS AND v. RECOMMENDATION 14 CALIFORNIA DEPARTMENT OF CORRECTIONS AND (ECF No. 14) 15 REHABILITATION. 16 Defendant. 17 18 Plaintiff Darnell Dukes is a state prisoner proceeding pro se and in forma pauperis in this 19 civil rights action pursuant to 42 U.S.C. § 1983. 20 On April 3, 2019, the assigned Magistrate Judge issued an order requiring Plaintiff to show 21 cause, within twenty-one days, why this action should not be dismissed, without prejudice, for 22 failure to exhaust administrative remedies prior to filing suit. (ECF No. 10.) On May 29, 2019, 23 after Plaintiff failed to file a response to the order to show cause, the assigned Magistrate Judge 24 issued Findings and Recommendation recommending dismissal of this action, without prejudice, due to Plaintiff's failure to exhaust his administrative remedies prior to filing suit. (ECF No. 11.) 25 26 The Findings and Recommendation were served on Plaintiff and contained notice that any 27 objections thereto were to be filed within fourteen (14) days after service. (Id. at 4.)

On June 28, 2019, after Plaintiff failed to file objections during the allotted time period, the

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undersigned issued an order adopting the May 29, 2019 Findings and Recommendation in full and dismissing this action, without prejudice, due to Plaintiff's failure to exhaust administrative remedies prior to filing suit. (ECF No. 12.)

On July 1, 2019, Plaintiff filed untimely objections to the Magistrate Judge's Findings and Recommendation. (ECF No. 14.) Though Plaintiff's objections were untimely filed, out of an abundance of caution and in consideration of Plaintiff's *pro se* status, the undersigned has reviewed the objections.

Plaintiff's objections assert that, after Plaintiff received the order to show cause on April 8, 2019, Corcoran State Prison officials failed to give him sufficient access to the law library, he has a pending inmate appeal "regarding everything stated," and he is in fear of his safety from prison staff and correctional officers. (Id.) Nevertheless, Plaintiff has failed to provide the Court with any evidence demonstrating that he exhausted his available administrative remedies prior to filing this suit. Therefore, Plaintiff's objections do not warrant a different result or vacation of the Court's June 28, 2019 order adopting the Findings and Recommendation and dismissing this action, without prejudice, due to Plaintiff's failure to exhaust prior to filing suit.

Accordingly, Plaintiff's objections to the Magistrate Judge's May 29, 2019 findings and recommendations, (ECF No. 14), are HEREBY OVERRULED. This case remains closed. IT IS SO ORDERED.

Dated: August 7, 2019 /s/ Lawrence J. O'Neill \_\_\_\_\_ UNITED STATES CHIEF DISTRICT JUDGE