## 1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 ADAM SHARPE, No. 1:19-cv-00711-DAD-EPG (PC) 12 Plaintiff. 13 v. ORDER ADOPTING FINDINGS AND 14 C. CRYER, et al., DEFENDANTS' MOTION FOR SUMMARY JDGMENT AS TO DEFENDANT SMITH 15 Defendants. DUE TO PLAINTIFF'S FAILURE TO **EXHAUST ADMINISTRATIVE REMEDIES** 16 (Doc. Nos. 50, 63) 17 18 19 Plaintiff Adam Sharpe is a state prisoner proceeding pro se and in forma pauperis in this 20 civil rights action under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate 21 Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. 22 On April 23, 2021, the assigned magistrate judge issued findings and recommendations recommending that defendants' motion for summary judgment (Doc. No. 50) be granted only as 23 to plaintiff's claims against defendant Smith due to plaintiff's failure to exhaust his administrative 24 remedies prior to filing suit as is required. (Doc. No. 63.) The findings and recommendations 25 26 were served on the parties and contained notice that any objections thereto were to be filed within 27 twenty-one (21) days after service. (Id. at 13.) To date, no objections have been filed and the

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time in which to do so has now passed.

The court notes, however, that on April 20, 2021, plaintiff mailed a document titled "Opposition to defendant Smith's Response to Court Order" to the court for filing, but that document was not received by the Clerk of the Court for filing on the docket until April 26, 2021—a few days after the pending findings and recommendations were issued. (Doc. No. 64.) Nevertheless, the court has considered plaintiff's filing. In that opposition, plaintiff merely restates the arguments that he presented in his opposition to defendants' motion for summary judgment as to plaintiff's claim against defendant Smith. Those arguments were already appropriately addressed in the pending findings and recommendations.

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

Accordingly,

- 1. The findings and recommendations issued on April 23, 2021 (Doc. No. 63) are adopted in full;
- 2. Defendants' motion for summary judgment based upon plaintiff's failure to exhaust his administrative remedies prior to filing suit as required with respect to plaintiff's claim against defendant Smith in this action (Doc. No. 50) is granted;
- 3. Plaintiff's claim against defendant Smith is dismissed without prejudice;
- 4. The Clerk of the Court is directed to terminate defendant Smith as a defendant in this action; and
- 5. This matter is referred back to the assigned magistrate judge for further proceedings.

IT IS SO ORDERED.

Dated: **June 4, 2021** 

UNITED STATES DISTRICT JUDGE