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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

RICHARD A. MATLOCK,  
Plaintiff,  
v.  
DONNY YOUNGBLOOD, *et al.*,  
Defendants.

Case No. 1:19-cv-01368-JLT-CDB (PC)  
**ORDER HOLDING FINDINGS AND  
RECOMMENDATIONS IN ABEYANCE;  
ALLOWING PLAINTIFF TO FILE SWORN  
DECLARATION**  
*Thirty Day Deadline*

Richard A. Matlock filed this action under 42 U.S.C. § 1983, seeking to hold Defendants liable for failure to protect him from an assault by another inmate in violation of the Fourteenth Amendment. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

Defendants filed a motion for summary judgment based on non-exhaustion of administrative remedies. (Doc. 54.) Plaintiff filed a motion for a sixty-day extension of time to respond, which the Court granted. (Docs. 56, 57.) After Plaintiff failed to file a timely response, the Court entered an order requiring Plaintiff to show cause why the Court should not deem the motion for summary judgment unopposed. (Doc. 60.) Plaintiff failed to respond to the order to show cause or file a response to the motion for summary judgment.

The assigned magistrate judge entered findings and recommendations deeming

1 Defendants' motion for summary judgment unopposed and recommending the Court grant the  
2 motion based on Plaintiff's failure to exhaust administrative remedies prior to filing the  
3 complaint. (Doc. 64.) Specifically, the magistrate judge determined that Defendants met their  
4 burden to show Plaintiff failed to utilize the inmate grievance procedures at the Kern County  
5 Sheriff's Office and submit a grievance in this matter. (*Id.*)

6 Plaintiff filed objections to the magistrate judge's findings and recommendations. (Doc.  
7 No. 65.) In his objections, Plaintiff admits he never filed an administrative complaint, but he  
8 argues the administrative remedies were effectively unavailable to him. Upon his return to the  
9 county jail from the medical facility, Plaintiff indicated that he wished to file a report about the  
10 incident, but officers told him it "would be a waste of time" and denied him the paperwork. (*Id.*  
11 at 1.) Plaintiff further argues that any effort to exhaust would have been futile, given that he was  
12 transferred from County custody to a federal facility in a different state. (*Id.* at 2.)

13 The Court notes that the appropriate time to raise these arguments was in response to the  
14 motion for summary judgment. The Court provided Plaintiff with ample opportunities to respond  
15 to the motion for summary judgment, but Plaintiff failed to file a timely response, seek another  
16 extension of time, or explain why he did not take advantage of opportunities to oppose the  
17 motion. Given Plaintiff's failure to respond, the magistrate judge properly deemed the motion for  
18 summary judgment to be opposed. It remains unclear why Plaintiff failed to timely file an  
19 opposition, and Plaintiff is warned that he must be more diligent in the future.

20 Nonetheless, the information contained in the objections may be material to the  
21 exhaustion analysis. However, Plaintiff's objections are not signed under perjury, so do not  
22 constitute evidence the Court can consider on summary judgment. Therefore, the Court will hold  
23 the findings and recommendations in abeyance and will allow Plaintiff an opportunity to  
24 supplement the record with a sworn declaration. Accordingly, the Court **ORDERS**:

- 25 1. The findings and recommendations filed on April 10, 2023, (Doc. 64), are **HELD**  
26 **IN ABEYANCE**.
- 27 2. Within **thirty days** of the date of this order, Plaintiff may supplement the record  
28 with a declaration, sworn under the penalty of perjury, setting forth any facts of

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which he is personally aware that he believes are relevant to the question of whether administrative remedies were unavailable to him.

3. If Plaintiff files a responsive declaration, Defendants may file a responsive declaration or concise legal brief within **twenty-one days** of Plaintiff's response.
4. If Plaintiff fails to file a declaration within the allotted thirty days, the Court will rule on the Defendants' motion for summary judgment on the present record.

IT IS SO ORDERED.

Dated: **June 19, 2023**

  
UNITED STATES DISTRICT JUDGE