UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

ALLEN HAMMLER, Plaintiff, v. LYONS, et al., Defendants.	No. 1:19-cv-01650-ADA-GSA (PC) ORDER ADOPTING FINDINGS AND RECOMMENDATIONS AND GRANTING DEFENDANT LUCAS'S MOTION FOR SUMMARY JUDGMENT ORDER FOR CLERK TO CLOSE THE CASE (ECF Nos. 61, 77)

Plaintiff Allen Hammler ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis* with 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 February 14, 2023, findings and recommendations were entered, recommending that Defendant Lucas's motion for summary judgment for failure to exhaust be granted. (ECF No. 77.) The Court granted Plaintiff fourteen days to file objections to the findings and recommendations. (*Id.*) On March 8, 2023, and April 11, 2023, Plaintiff was granted extensions of time to file objections to the findings and recommendations. (ECF Nos. 79, 83.) On May 5, 2023, Plaintiff filed a notice of inability to prepare objections due to his file being illegally confiscated. (ECF No. 85.) On May 12, 2023, Defendant Lucas filed a response to Plaintiff's notice. (ECF No. 86.)

Upon review of Plaintiff's notice, the Court finds that the notice, construed as objections, substantively responded to the Magistrate Judge's findings and recommendations. (*See* ECF No.

85.) The Court holds that the alleged missing documents do not overcome Plaintiff's failure to exhaust his administrative remedies, as the Magistrate Judge found in his order, dated February 14, 2023. (*See* ECF No. 77.) Plaintiff does not explain why the missing documents were not submitted with his opposition, due June 2, 2022, when he had lost these documents after the deadline, on January 18, 2023. (*See* ECF No. 85.) In opposition to Defendant's motion for summary judgment, Plaintiff filed a 41-page brief, including several exhibits including CDCR Form 22s. (*See* ECF No. 67.) Overall, the Court finds that Plaintiff's notice, construed as objections to the findings and recommendations, do not overcome the fact that he did not exhaust administrative remedies.

In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, this Court has conducted a *de novo* review of this case. Having carefully reviewed the entire file, the Court finds the findings and recommendations to be supported by the record and proper analysis.

Accordingly,

1. The Findings and Recommendations issued by the Magistrate Judge on February 14, 2023, (ECF No. 77), are ADOPTED in full;
2. Defendant Lucas's motion for summary judgment for failure to exhaust, filed on March 14, 2022, (ECF No. 61), is GRANTED;
3. This action is DISMISSED without prejudice, for failure to exhaust administrative remedies before filing suit; and
4. The Clerk is directed to CLOSE this case.

IT IS SO ORDERED.

Dated: June 12, 2023

UNITED STATES DISTRICT JUDGE