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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

RICKY TYRONE FOSTER,

Plaintiff,

v.

CHRISTOPHER BAKER, *et al.*,

Defendants.

Case No. 1:23-cv-01097-JLT-EPG (PC)

FINDINGS AND RECOMMENDATIONS TO

- 1) DISMISS FEDERAL CONSTITUTIONAL CLAIM WITHOUT PREJUDICE BECAUSE PLAINTIFF IS BARRED BY COLLATERAL ESTOPPEL FROM CHALLENGING EXHAUSTION ON THE SAME FACTS; AND
- 2) DECLINE TO EXERCISE SUPPLEMENTAL JURISDICTION OVER THE REMAINING CONTRACT CLAIM AND REMAND THE CASE TO SUPERIOR COURT OF CALIFORNIA, COUNTY OF KINGS

OBJECTIONS, IF ANY, DUE WITHIN 30 DAYS

Plaintiff Ricky Tyrone Foster is a state prisoner proceeding *pro se* in this case removed by Defendants from state court to this Court. Plaintiff's complaint asserts two causes of action: a breach of contract claim related to a purported stipulation regarding the issue of exhaustion, and a constitutional intentional tort claim of excessive force.

For the reasons stated below, the Court recommends that Plaintiff's federal constitutional claim be dismissed without prejudice because Plaintiff is barred by collateral

1 estoppel from asserting exhaustion. Plaintiff previously litigated the issue of exhaustion in this  
2 Court regarding the same claim against the same defendants in *Foster v. Baker*, No. 1:18-cv-  
3 01511-DAD-SAB (E.D. Cal.) (*Foster I*), and there has been no material change in the facts  
4 regarding exhaustion since the entry of judgment in that case.

5 The Court also recommends declining to exercise supplemental jurisdiction over the  
6 remaining breach of contract claim and remanding it to state court.

## 7 **I. SCREENING REQUIREMENT**

8 The Prison Litigation Reform Act of 1995 (PLRA) requires courts to screen complaints  
9 brought by prisoners seeking relief against a governmental entity or officer or employee of a  
10 governmental entity. 28 U.S.C. § 1915A(a). The Court also screens complaints brought by  
11 persons proceeding *in forma pauperis*. 28 U.S.C. § 1915(e)(2). Plaintiff’s complaint, or any  
12 portion thereof, is subject to dismissal if it is frivolous or malicious, which encompasses  
13 duplicative cases where a complaint merely repeats pending or previously litigated claims. *See*  
14 28 U.S.C. § 1915A; 28 U.S.C. § 1915(e)(2)(B)(i); *Cato v. United States*, 70 F.3d 1103, 1105  
15 n.2 (9th Cir. 1995) (citing earlier version of § 1915(e)); *see also Denton v. Hernandez*, 504 U.S.  
16 25, 30 (1992) (recognizing Congress’s concern regarding IFP litigants “filing frivolous,  
17 malicious, or *repetitive* lawsuits”) (emphasis added).

## 18 **II. BACKGROUND**

### 19 **A. Underlying Incident**

20 According to Plaintiff’s allegations, in August of 2017, prison guards at California State  
21 Prison-Corcoran C. Baker, J. Navarro, and John Does 1 and 2 failed to protect Plaintiff from an  
22 assault by inmate Abella out of retaliation against Plaintiff. (ECF No. 1 at 11–12).

### 23 **B. Prior State Mandamus Petition**

24 According to Plaintiff, Plaintiff timely filed grievances related to this incident in  
25 September of 2017. ECF No. 38 at 33, *Foster I*. After receiving no response to his grievances  
26 related to the August 2017 incident, on January 12, 2018, Plaintiff filed a Petition for Writ of  
27 Mandamus in Kings County Superior Court, Case number 18C-0031. ECF No. 38 at 31–38,  
28 *Foster I*. Plaintiff asked that the state court direct respondents, Warden of CSP-Corcoran and

1 CDCR, to either respond to his grievances or waive the exhaustion so that plaintiff can litigate  
2 his claim in state or federal court. *Id.* at 34–35.

3 In his Answer, CSP-Corcoran warden, represented by the Office of Attorney General,  
4 acknowledged that Plaintiff seeks a waiver of “exhaustion requirement to allow him to pursue a  
5 civil claim in state or federal court.” Case Management Statement, Apr. 23, 2020, ECF No. 36  
6 at 8, *Foster I*. Respondent then submitted a proposed order to the court dismissing Plaintiff’s  
7 petition, which stated “Foster’s administrative remedies are exhausted with respect to the  
8 appeal at issue in this petition (Log Nos. Cal-17–01322 and COR-17–04927).” Proposed Order,  
9 July 1, 2020, ECF No. 36 at 14–15, *Foster I*. After holding a hearing, on July 9, 2020, the state  
10 court issued the proposed order in its entirety, crossing out only the word “proposed” in the  
11 title, and entered judgment for respondent, dismissing Plaintiff’s petition. Signed Order, ECF  
12 No. 38 at 44–45, *Foster I*.

13 **C. *Foster I* Case**

14 On July 30, 2018, Plaintiff filed case number 18C-0240 in Kings County Superior Court  
15 against defendants Christopher Baker, J. Navarro, and Does 1 to 2, for violating his federal  
16 constitutional rights in August of 2017. *See* Complaint, ECF No. 1 at 7, *Foster I*. Plaintiff  
17 alleged that defendants retaliated against him and failed to intervene while Plaintiff was  
18 assaulted by another inmate. (*Id.*) In October of 2018, defendants removed that case to federal  
19 court, where it became *Foster v. Baker*, No. 1:18-cv-01511-DAD-SAB (E.D. Cal.) (*Foster I*),  
20 case.

21 In February of 2020, defendants in *Foster I* case, represented by the Office of Attorney  
22 General, moved for summary judgment on the ground that Plaintiff failed to exhaust available  
23 administrative remedies for his claims before filing his suit. Defendants eventually prevailed on  
24 their argument, and on July 19, 2021, the district court granted defendants’ motion, dismissed  
25 Plaintiff’s complaint for failure to exhaust, and entered judgment in Defendants’ favor. ECF  
26 Nos. 39, 40, *Foster I*.

1 In its order adopting the Findings and Recommendations and dismissing Plaintiff's  
2 complaint for failure to exhaust, the District Judge addressed Plaintiff's arguments regarding  
3 the state court's previous order in the mandamus petition, as follows:

4 Plaintiff has attached to his objections an order wherein the state court  
5 did state in cursory fashion that plaintiff had administratively exhausted  
6 the inmate appeal at issue in this case. (*Id.* at 45.) That state court order  
7 issued in the context of the dismissal of plaintiff's writ of mandate as  
8 moot because the state court concluded prison officials had responded to  
9 his administrative appeal at all three levels of review. (*Id.*) However, it is  
10 unclear what analysis was done by and whether the cancellation appeal  
11 was considered by the state court in making the statement in question.  
12 Most importantly, neither that state court order nor plaintiff's objections  
13 rebut the Ninth Circuit authority which appears to control the resolution  
14 of the issue presented here. *Cortinas*, 754 Fed. App'x. at 527 (Because  
15 under California Code of Regulations, Title 15 § 3084.6(a)(3) and (e) an  
16 inmate can appeal a cancellation decision separately pursuant to the rules  
17 in § 3084.6(c), and if inmate prevails, cancelled inmate appeal can be  
18 considered at the discretion of the appeals coordinator, "Cortinas could  
19 have appealed his cancellation decision, this case is distinguishable from  
20 *Sapp*, and the improper cancellation of his appeal did not render  
21 administrative remedies effectively unavailable to him.") (citing *Wilson*  
22 *v. Zubiato*, 718 F. App'x 479, 482 (9th Cir. 2017)); *see also Felde v.*  
23 *Wilkins*, No. 1:19-cv-00339-NONE-HBK, 2021 WL 1241075, at \*4  
24 (E.D. Cal. Mar. 26, 2021); *Belton v. Houston*, No. ED CV 19-01179-PA  
25 (DFM), 2021 WL 785146, at \*5 (N.D. Cal. Jan. 8, 2021), *report and*  
26 *recommendations adopted by* 2021 WL 784961 (N.D. Cal. Feb. 26,  
27 2021) Therefore, the court is not persuaded to depart from the analysis  
28 set forth in the pending findings and recommendations.

Order Adopting Findings and Recommendations, ECF No. 39, *Foster I.*

**D. The Instant Case**

On April 28, 2023, Plaintiff again filed a complaint against the same defendants—CSP-  
Corcoran prison guards Christopher Baker, J. Navarro, and Does 1 to 2—in Kings County  
Superior Court, alleging two claims. (ECF No. 1 at 5).

First, Plaintiff alleges a breach of contract claim by defendants based on defendants  
asserting inconsistent positions in concurrent federal and state proceedings in 2020.  
Specifically, Plaintiff alleges that defendants' counsel—Office of Attorney General in both  
cases—breached the state-court stipulation in federal court by moving for summary judgment

1 in *Foster I* against Plaintiff on the ground that he failed to exhaust administrative remedies  
2 when the attorneys had had represented to state court that Plaintiff had exhausted such  
3 remedies. (ECF No. 1 at 7).

4 For his second claim, Plaintiff alleges the intentional tort action against defendants  
5 C. Baker, J. Navarro, and John Does 1 and 2 based on the allegation that they violated his  
6 federal constitutional rights when they failed to protect Plaintiff from an assault by inmate  
7 Abella out of retaliation against Plaintiff. (*Id.* 8–16).

8 After being served with the complaint, Defendants Christopher Baker and J. Navarro  
9 again removed the case to federal court and requested that this Court screen the complaint. (*Id.*  
10 at 1–2).

#### 11 **E. Order to Show Cause**

12 Upon this court’s review of the complaint for screening purposes, the Court issued an  
13 Order for Plaintiff to Show Cause why this case should not be dismissed as barred by collateral  
14 estoppel. (ECF No. 5). From the face of Plaintiff’s complaint, it appeared that Plaintiff  
15 improperly sought to relitigate a final order from *Foster I*, because Plaintiff was asserting the  
16 same underlying failure-to-protect claim and seeking to challenge the previous finding that  
17 Plaintiff had failed to exhaust his administrative remedies as to that claim, without any change  
18 in facts.

19 Plaintiff timely filed a response to the Court’s Order to Show Cause. (ECF No. 6).  
20 Plaintiff asserts that he filed the action in state court for breach of contract between the parties.  
21 (*Id.* at 2, 5). Plaintiff argues that the parties entered into a stipulation regarding exhaustion in  
22 Kings County Superior Court and that he sought to enforce that agreement in the same state  
23 court. (*Id.* at 2, 4, 5). Plaintiff also argues that Defendants should be estopped from asserting  
24 that Plaintiff had exhausted his administrative remedies with respect to the underlying claims  
25 and succeeded in obtaining a judgment in their favor. (ECF No. 6 at 3, 4). Plaintiff asks the  
26 Court to remand the case back to state Court that first decided the question of exhaustion of  
27 administrative remedies. (*Id.* at 8).

1 **III. ANALYSIS**

2 **A. Federal constitutional claim**

3 **i. Legal Standard**

4 Under federal law, collateral estoppel “bars relitigation of issues adjudicated in an  
5 earlier proceeding if three requirements are met: ‘(1) the issue necessarily decided at the  
6 previous proceeding is identical to the one which is sought to be relitigated; (2) the first  
7 proceeding ended with a final judgment on the merits; and (3) the party against whom collateral  
8 estoppel is asserted was a party or in privity with a party at the first proceeding.’” *Reyn’s Pasta*  
9 *Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 (9th Cir. 2006) (quoting *Kourtis v. Cameron*,  
10 419 F.3d 989, 994 (9th Cir. 2005)).

11 Further, collateral estoppel can apply to a dismissal without prejudice if the  
12 determination being according preclusive effect was essential to the judgment of dismissal.  
13 *Gallegos v. Reinstein*, No. 12–16736, 560 F. App’x 669 (9th Cir. Mar. 4, 2014) (“Dismissal of  
14 Gallegos’s claims related to a prior § 1983 action that the Arizona district court dismissed  
15 without prejudice was proper under the doctrine of collateral estoppel because the issues raised  
16 in these claims had been previously litigated, and were necessary to the prior judgment of  
17 dismissal.”) (citing *McQuillion v. Schwarzenegger*, 369 F.3d 1091, 1096 (9th Cir. 2004) and  
18 *Deutsch v. Flannery*, 823 F.2d 1361, 1364 (9th Cir. 1987)) (“The litigation of an issue  
19 presented and necessarily decided in a prior action between the same parties is foreclosed by  
20 the doctrine of issue preclusion. It matters not that the prior action resulted in a dismissal  
21 without prejudice, so long as the determination being accorded preclusive effect was essential  
22 to the dismissal.”) (internal citations omitted). “[T]he principle is simply that later courts  
23 should honor the first actual decision of a matter that has been actually litigated.” 18 C. Wright,  
24 A. Miller, & E. Cooper, *Federal Practice and Procedure* § 4416 (3d ed. 1998). Collateral  
25 estoppel serves to “relieve parties of the cost and vexation of multiple lawsuits, conserve  
26 judicial resources, and, by preventing inconsistent decisions, encourage reliance on  
27 adjudication.” *Allen v. McCurry*, 449 U.S. 90, 94 (1980).

1                   **ii. Plaintiff is barred by collateral estoppel from challenging**  
2                   **non-exhaustion ruling based on the same facts**

3                   All three elements of collateral estoppel are met here with respect to the issue of  
4                   exhaustion of administrative remedies for Plaintiff’s federal constitutional claim.

5                   As to the first element, the issue of exhaustion decided in *Foster I* is identical to the one  
6                   that is sought to be relitigated here. The Court in *Foster I* dismissed Plaintiff’s earlier case  
7                   based on a legal determination that Plaintiff had failed to exhaust administrative remedies  
8                   before filing the lawsuit, regarding the same underlying incident. Additionally, the Court is  
9                   *Foster I* addressed Plaintiff’s argument that an earlier state court order had found otherwise.  
10                  Moreover, Plaintiff has not asserted any new facts regarding exhaustion.

11                  Plaintiff attempts to distinguish between the instant case and *Foster I* case by arguing  
12                  that the parties entered into a stipulation agreement regarding exhaustion and that this  
13                  agreement was not addressed in *Foster I* order dismissing the case. (ECF No. 6 at 4). Plaintiff  
14                  states that this Stipulation Agreement is attached as Exhibit D to his objections to the  
15                  magistrate judge withdrawing his Findings and Recommendations in *Foster I* case. (*Id.* at 2).  
16                  However, Exhibit D to ECF No. 38 filed on October 8, 2020 in *Foster I* case, 1:18-cv-01511,  
17                  appears to be not a stipulation agreement but the July 9, 2020 state court decision dismissing  
18                  Plaintiff’s mandamus petition.

19                  Contrary to Plaintiff’s argument, as illustrated *supra* with the block quote, this order  
20                  was explicitly addressed in *Foster I*. (ECF No. 1 at 39) (“Plaintiff has attached to his objections  
21                  an order wherein the state court did state in cursory fashion that Plaintiff had administratively  
22                  exhausted the inmate appeal at issue in this case.”) Plaintiff offers no new evidence that would  
23                  demonstrate he has exhausted administrative remedies since *Foster I* was decided and  
24                  Plaintiff’s arguments on exhaustion are the same ones that were or could have been litigated in  
25                  *Foster I*. *Gallegos*, 560 F. App’x at 669; *Wright v. Carter*, No. C07–5351FDB, 2007 WL  
26                  4562883, at \*3–4 (W.D. Wash., Dec. 21, 2007) (adopting recommendation and dismissing case  
27                  on estoppel grounds where “[t]here has been no material change in the facts regarding  
28                  exhaustion since entry of judgment in *Wright I*”); *Clark v. Mason*, No. C04–1647C, 2005 WL

1 1189577, at \*4–5 (W.D. Wash., May 19, 2005) (“[T]he doctrine of collateral estoppel should  
2 preclude plaintiff from relitigating the issue of whether he had exhausted administrative  
3 remedies for the claims asserted in *Leeburg* before he filed his complaint in that action. While  
4 plaintiff asserts that defendants obtained dismissal in *Leeburg* through false testimony and  
5 arguments, plaintiff had the opportunity in that case and on appeal to address those issues.”).

6 As to the second element, while *Foster I* ended in a dismissal without prejudice, the  
7 determination made in *Foster I*—that Plaintiff failed to exhaust administrative remedies  
8 notwithstanding the state court litigation—was essential to the judgment of dismissal in  
9 previous case. The judgment in *Foster I* was entered “in accordance with the court’s order filed  
10 on 07/19/2021,” EFF No. 40, *Foster I*, and that order granted defendants’ motion for summary  
11 judgment on the basis that Plaintiff failed to exhaust administrative remedies available to him.  
12 ECF No. 39, *Foster I*. The determination of non-exhaustion should therefore be accorded a  
13 preclusive effect in this one. *Deutsch*, 823 F.2d at 1364, 1364 (“It matters not that the prior  
14 action resulted in a dismissal without prejudice, so long as the determination being accorded  
15 preclusive effect was essential to the dismissal.”)

16 Finally, as to the third element, both *Foster I* and this case were litigated against the  
17 same defendants.

18 All three elements of collateral estoppel are met here, and Plaintiff is thus barred by  
19 collateral estoppel from challenging non-exhaustion ruling in *Foster I* based on the same facts.  
20 It follows then—because *Foster I* determination that Plaintiff has not exhausted his  
21 administrative remedies with respect to the same grievances and the same defendants cannot be  
22 relitigated in this action—that Plaintiff cannot proceed on his underlying constitutional claim  
23 against defendants in this Court.<sup>1</sup> Therefore, the Court will recommend that Plaintiff’s federal  
24 constitutional claim be dismissed without prejudice. That, however, still leaves Plaintiff’s  
25 breach of contract claim against defendants.

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26  
27  
28 <sup>1</sup> This Court takes no position as to whether Plaintiff may be able to proceed on this claim in  
state court after a remand.

1           **B. Breach of contract claim**

2                   **i. Legal Standard**

3           This Court has federal question jurisdiction over “all civil actions arising under the  
4 Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. Determination of federal  
5 question jurisdiction “is governed by the ‘well-pleaded complaint rule,’ which provides that  
6 federal jurisdiction exists only when a federal question is presented on the face of plaintiff’s  
7 properly pleaded complaint.” *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). Therefore,  
8 plaintiff’s complaint must establish “either that (1) federal law creates the cause of action or  
9 that (2) plaintiff’s right to relief necessarily depends on resolution of a substantial question of  
10 federal law.” *Williston Basin Interstate Pipeline Co. v. An Exclusive Gas Storage Leasehold &*  
11 *Easement*, 524 F.3d 1090, 1100 (9th Cir. 2008); *see also Barefield v. HSBC Holdings PLC*,  
12 2018 WL 3702307, at \*4 (E.D. Cal. 2018). “[A]ny civil action brought in a State court of which  
13 the district courts of the United States have original jurisdiction, may be removed by the  
14 defendant.” 28 U.S.C. § 1441(a). Once a case has been properly removed, the district court has  
15 jurisdiction over it on all grounds apparent from the complaint, not just those cited in the  
16 removal notice. *Williams v. Costco Wholesale Corp.*, 471 F.3d 975, 977 (9th Cir. 2006).

17           A district court “may decline to exercise supplemental jurisdiction . . . [if] the district  
18 court has dismissed all claims over which it has original jurisdiction.” 28 U.S.C. § 1367(c)(3);  
19 *see also Acri v. Varian Assocs., Inc.*, 114 F.3d 999, 1001 n.3 (9th Cir. 1997) (en banc)  
20 (explaining that a district court may decide sua sponte to decline to exercise supplemental  
21 jurisdiction).

22                   **ii. Supplemental jurisdiction**

23           The Court has recommended the dismissal of Plaintiff’s constitutional tort claim, which  
24 was the basis for Court’s federal question jurisdiction under 28 U.S.C. § 1331. (ECF No. 1 at  
25 1). Because there are no federal claims remaining in this case, the question then becomes  
26 whether the Court should exercise supplemental jurisdiction over the breach of contract claim.  
27 § 1367(c)(3). The Supreme Court has stated that “in the usual case in which all federal-law  
28 claims are eliminated before trial, the balance of factors to be considered under the pendent

1 jurisdiction doctrine—judicial economy, convenience, fairness, and comity—will point toward  
2 declining to exercise jurisdiction over the remaining state-law claims.” *Carnegie–Mellon Univ.*  
3 *v. Cohill*, 484 U.S. 343, 350 n.7 (1988); *see also United Mine Workers of Am. v. Gibbs*, 383  
4 U.S. 715, 726 (1966) (“Needless decisions of state law should be avoided both as a matter of  
5 comity and to promote justice between the parties, by procuring for them a surer-footed reading  
6 of applicable law.”); *Ove v. Gwinn*, 264 F.3d 817, 826 (9th Cir. 2001) (citing *San Pedro Hotel*  
7 *Co., Inc. v. City of Los Angeles*, 159 F.3d 470, 478 (9th Cir. 1998)) (holding that a district court  
8 is not required to provide an explanation when declining jurisdiction under § 1367(c)).

9 Notwithstanding the fact that this case has been pending before this Court since July 2023, the  
10 Court has not engaged substantively in the remaining claim. Thus, these considerations favor  
11 remand of Plaintiff’s breach of contract claim.

12 **IV. CONCLUSION**

13 Based on the foregoing, the Court **RECOMMENDS** that:

- 14 1. Plaintiff’s federal constitutional claim be dismissed as barred by collateral estoppel  
15 because there has been no material change in the facts regarding exhaustion since  
16 the entry of judgment in *Foster v. Baker*, No. 1:18-cv-01511-DAD-SAB (E.D. Cal.  
17 Feb. 16, 2022); and
- 18 2. Pursuant to 28 U.S.C. § 1367(c), the Court decline supplemental jurisdiction over  
19 Plaintiff’s breach of contract claim, and remand the remainder of this case to the  
20 Kings County Superior Court.

21  
22 IT IS SO ORDERED.

23 Dated: September 25, 2024

24 /s/ Eric P. Gray  
25 UNITED STATES MAGISTRATE JUDGE  
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28