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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

IRA DON PARTHMORE,

Plaintiff,

No. 2:09-cv-2330 JFM (PC)

vs.

M. MARTEL, et al.,

Defendants.

ORDER

\_\_\_\_\_/

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. On August 25, 2010, this court issued findings and recommendations recommending that defendants’ motion to dismiss this action be granted and that this action be dismissed for failure to exhaust administrative remedies prior to suit, as required by 42 U.S.C. § 1997e(a). Since that time, the United States Court of Appeals for the Ninth Circuit has issued two opinions which may bear on issues raised in defendants’ motion. Accordingly, good cause appearing, the findings and recommendations filed August 25, 2010 will be vacated. The parties will be directed to brief the application of Rhodes v. Robinson, \_\_ F.3d \_\_, 2010 WL 3489777 (9th Cir. Sept. 8, 2010) and Sapp v. Kimbrell, \_\_ F.3d \_\_, 2010 WL 3733581 (9th Cir. Sept. 27, 2010) to the issues raised in defendants’ motion. Defendants shall take all steps necessary to ensure that plaintiff timely receives a copy of the foregoing decisions.

In accordance with the above, IT IS HEREBY ORDERED that:

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1. The findings and recommendations filed August 25, 2010 are vacated;

2. Within thirty days from the date of this order the parties shall file supplemental briefs addressing the application of Rhodes v. Robinson, \_\_ F.3d \_\_, 2010 WL 3489777 (9th Cir. Sept. 8, 2010) and Sapp v. Kimbrell, \_\_ F.3d \_\_, 2010 WL 3733581 (9th Cir. Sept. 27, 2010) to the issues raised in defendants' motion; and

3. Defendants shall take all steps necessary to ensure that plaintiff timely receives a copy of the decisions referred to in paragraph 2 of this order.

DATED: October 5, 2010.

  
UNITED STATES MAGISTRATE JUDGE

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