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

RICHARD MANUEL BURGOS,

No. 2:09-cv-03276-MCE-CMK-P

Plaintiff,

vs.

ORDER

MATTHEW L. CATE, et al.,

Defendants.

_____ /

Plaintiff, a state prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to Eastern District of California local rules.

On December 17, 2012, the Magistrate Judge filed findings and recommendations herein (ECF No. 46) which were served on the parties and which contained notice that the parties may file objections within a specified time. Timely objections¹ to the findings and recommendations have been filed.

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¹ Plaintiff filed objections, but concedes in those objections that he failed to exhaust his administrative remedies and agrees with the Magistrate Judge's recommendation.

1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule
2 304(f), this Court has conducted a de novo review of this case. Having carefully reviewed the
3 entire file, the Court finds the findings and recommendations to be supported by the record and
4 by proper analysis.

5 Accordingly, IT IS HEREBY ORDERED that:

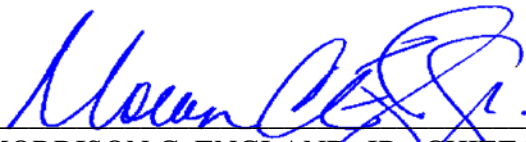
6 1. The findings and recommendations filed December 17, 2012 (ECF No.
7 46) are ADOPTED IN FULL; and

8 2. Defendants' motion to dismiss (ECF No. 23) is GRANTED IN PART;

9 3. Plaintiff's claims relating to the denial of unlimited toilet flushes is
10 dismissed, the Doe defendants are dismissed, and this action shall continue on Plaintiff's claims
11 relating to the foam mattress and pillows against Defendants Capel, Clay and Haseltine; and

12 4. Defendants Capel, Clay and Haseltine shall file an answer to Plaintiff's
13 First Amended Complaint within 14 days from the date this Order is electronically filed.

14 DATED: February 14, 2013

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20 MORRISON C. ENGLAND, JR., CHIEF JUDGE
21 UNITED STATES DISTRICT JUDGE
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