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

JOEL HOLLEY,

Plaintiff,

No. CIV S-10-0615 MCE EFB P

vs.

GARY SWARTHOUT, et al.,

Defendants.

ORDER

_____/

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 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 September 1, 2011, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen days from the date the findings and recommendations were served. Defendants have filed objections to the findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this Court has conducted a de novo review of this case.

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1 Having carefully reviewed the entire file, the Court finds the findings and recommendations to be
2 supported by the record and by proper analysis.


3 The Court notes for the record that, while Defendants appear, via their objections
4 to the magistrate judge's findings and recommendations, to have attempted to rectify their failure
5 to address whether Plaintiff's first appeal was sufficient to exhaust his administrative remedies as
6 to all of his claims, the Court declines to address those belated arguments until they have been
7 properly briefed before the magistrate judge in the first instance.

8 Accordingly, IT IS HEREBY ORDERED that:

9 1. The findings and recommendations filed September 1, 2011 (ECF No. 48), are
10 ADOPTED in full; and

11 2. Defendants' January 24, 2011 motion to dismiss is DENIED without prejudice.

12 Dated: September 28, 2011

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15 MORRISON C. ENGLAND, JR.
16 UNITED STATES DISTRICT JUDGE
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