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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHARLEY McMURTRY,
Plaintiff,
v.
HU, et al.,
Defendants.

No. 2:12-cv-0103 DAD P

ORDER &
FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se with a civil rights action seeking relief under 42 U.S.C. § 1983. Now pending before the court is defendants’ motion for summary judgment, based on plaintiff’s alleged failure to exhaust his available administrative remedies prior to filing suit as required. (ECF No. 39.) Plaintiff has filed an opposition to the motion (ECF No. 46), and defendants, a reply (ECF No. 48).

BACKGROUND

Plaintiff proceeds on his original complaint against defendant Nurses Hu and Gebrezghi. In his complaint, plaintiff alleges that defendants violated his rights under the Eighth Amendment while he was incarcerated at California State Prison-Solano (“CSP-Solano”) by taking the following actions:

- On or about June 5, 2010, at a time when plaintiff was held in 5 point restraints, defendant Nurse Gebrezghi twice injected plaintiff with drugs. Plaintiff had informed

1 Nurse Gebrezghi of his phobia of needles; moreover, the drugs could have been orally
2 administered. (ECF No. 1 at 5, 7, 9.)

- 3 • On or about June 9, 2010, plaintiff was placed in a safety cell (also known as a “rubber
4 room”). After plaintiff complained about a lack of ventilation in the safety cell, a
5 correctional officer placed a fan in front of the cell, which allowed air to enter through
6 a crack at the bottom of the cell door. Less than 30 minutes later, defendant Nurse Hu
7 stated to plaintiff, “We don’t like you! You don’t get a fan! Besides, other inmates
8 will beg for one too!” and removed the fan. Plaintiff’s nose started to bleed, and he
9 “suffered in extremely harsh conditions” for twenty-four hours before a correctional
10 officer placed the fan back in front of the cell. (Id. at 10.)
- 11 • On or about June 11, 2010, Nurse Hu placed plaintiff’s arm in a restraint. When he
12 told her it was too tight, she replied, “I wish they [would] put you in a gas chamber so
13 I won’t have to bother with you anymore!” She then began to repeatedly express a
14 wish that she could kill plaintiff. (Id. at 11.)

15 At screening, the court found that plaintiff’s amended complaint appeared to state
16 cognizable claims for relief against defendants Hu and Gebrezghi and ordered service of the
17 complaint on them. (ECF No. 10.) Defendants then filed an answer. (ECF No. 23.) Defendants
18 now move for summary judgment, contending that plaintiff failed to properly exhaust
19 administrative remedies prior to filing suit as required.

20 **THE EXHAUSTION REQUIREMENT**

21 By the Prison Litigation Reform Act of 1995 (“PLRA”), Congress amended 42 U.S.C.
22 § 1997e to provide that “[n]o action shall be brought with respect to prison conditions under
23 section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or
24 other correctional facility until such administrative remedies as are available are exhausted.” 42
25 U.S.C. § 1997e(a). The exhaustion requirement “applies to all inmate suits about prison life,
26 whether they involve general circumstances or particular episodes, and whether they allege
27 excessive force or some other wrong.” Porter v. Nussle, 534 U.S. 516, 532 (2002).

28 /////

1 The United States Supreme Court has ruled that exhaustion of prison administrative
2 procedures is mandatory regardless of the relief offered through such procedures. See Booth v.
3 Churner, 532 U.S. 731, 741 (2001). The Supreme Court has also cautioned against reading
4 futility or other exceptions into the statutory exhaustion requirement. See id. at 741 n. 6.
5 Moreover, because proper exhaustion is necessary, a prisoner cannot satisfy the PLRA exhaustion
6 requirement by filing an untimely or otherwise procedurally defective administrative grievance or
7 appeal. See Woodford v. Ngo, 548 U.S. 81, 90-93 (2006). “[T]o properly exhaust administrative
8 remedies prisoners ‘must complete the administrative review process in accordance with the
9 applicable procedural rules,’ [] - rules that are defined not by the PLRA, but by the prison
10 grievance process itself.” Jones v. Bock, 549 U.S. 199, 218 (2007) (quoting Woodford, 548 U.S.
11 at 88). See also Marella v. Terhune, 568 F.3d 1024, 1027 (9th Cir. 2009) (“The California prison
12 system’s requirements ‘define the boundaries of proper exhaustion.’”).

13 The administrative inmate grievances at issue in this matter were filed by plaintiff prior to
14 January 28, 2011, the date on which CDCR issued revised regulations governing administrative
15 complaints by prisoners. Under the regulations previously in effect, prisoners were provided the
16 right to appeal administratively “any departmental decision, action, condition or policy which
17 they can demonstrate as having an adverse effect upon their welfare.” Cal. Code Regs. tit. 15, §
18 3084.1(a) (2009). In order to exhaust available administrative remedies within that prior system,
19 a prisoner was required to proceed through four levels of appeal: (1) informal resolution,
20 (2) formal written appeal on a 602 inmate appeal form, (3) second level appeal to the institution
21 head or designee, and (4) third level appeal to the Director of CDCR. Barry v. Ratelle, 985 F.
22 Supp. 1235, 1237 (S.D. Cal. 1997) (citing Cal. Code Regs. tit. 15, § 3084.5 (2009)). A final
23 decision at the Director’s level of review satisfied the administrative exhaustion requirement.

24 In order to “lodge [a]n administrative complaint on CDC Form 602, “prisoners were
25 required ‘to describe the problem and action requested.’” Morton v. Hall, 599 F.3d 942, 946 (9th
26 Cir. 2010) (quoting Cal. Code Regs. tit. 15, § 3084.2(a) (2010)). The content of a grievance was
27 sufficient if it “alert[ed] the prison to the nature of the wrong for which redress [wa]s sought.”
28 Griffin v. Arpaio, 557 F.3d 1117, 1120 (9th Cir. 2009). As the Ninth Circuit has instructed:

1 A grievance need not include legal terminology or legal theories
2 unless they are in some way needed to provide notice of the harm
3 being grieved. A grievance also need not contain every fact
4 necessary to prove each element of an eventual legal claim. The
primary purpose of a grievance is to alert the prison to a problem
and facilitate its resolution, not to lay groundwork for litigation.

5 Griffin, 557 F.3d at 1120.

6 The PLRA exhaustion requirement is not jurisdictional but rather creates an affirmative
7 defense that defendants must plead and prove. See Jones, 549 U.S. at 216 (“[I]nmates are not
8 required to specially plead or demonstrate exhaustion in their complaints.”); Albino v. Baca, 747
9 F.3d 1162, 1168 (9th Cir. 2014) (en banc). A defendant may move for dismissal under Federal
10 Rule of Civil Procedure 12(b)(6) “[i]n the rare event” that a prisoner’s failure to exhaust is clear
11 on the face of the complaint. Albino, 747 F.3d at 1168 & 1169. More typically, defendants are
12 required to move for summary judgment under Federal Rule of Civil Procedure 56 and produce
13 probative evidence that proves a prisoner’s failure to exhaust. See id. at 1166. In Albino, the
14 Ninth Circuit agreed with the underlying panel’s decision¹ “that the burdens outlined in Hilao [v.
15 Estate of Marcos, 103 F.3d 767, 778 n.5 (9th Cir. 1996),] should provide the template for the
16 burdens here.” Albino, 747 F.3d at 1172. Thus, a defendant need only show “that there was an
17 available administrative remedy, and that the prisoner did not exhaust that available remedy.” Id.

18 If the defendant carries that burden, “the prisoner has the burden of production. That is,
19 the burden shifts to the prisoner to come forward with evidence showing that there is something
20 in his particular case that made the existing and generally available administrative remedies
21 effectively unavailable to him.” Id. For example, prison officials can render administrative
22 remedies effectively unavailable by improperly screening out inmate grievances. See Sapp v.
23 Kimbrell, 623 F.3d 813, 823 (9th Cir. 2010). In such a case, “the inmate cannot pursue the
24 necessary sequence of appeals” Id. See also Nunez v. Duncan, 591 F.3d 1217, 1226 (9th
25 Cir. 2010) (excusing an inmate’s failure to exhaust because he was precluded from exhausting his

26 ¹ The Ninth Circuit has noted that “[a] defendant’s burden of establishing an inmate’s failure to
27 exhaust is very low.” Albino v. Baca, 697 F.3d 1023, 1031 (9th Cir. 2012). Relevant evidence
28 includes statutes, regulations, and other official directives that explain the scope of the
administrative review process. Id. at 1032.

1 administrative remedies by a warden's mistaken instruction to him that a particular unavailable
2 document was needed for him to pursue his inmate appeal); Marella, 568 F.3d 1024 (excusing an
3 inmate's failure to exhaust because he did not have access to the necessary grievance forms to
4 timely file his grievance).

5 Ultimately, if the undisputed evidence viewed in the light most favorable to the prisoner
6 demonstrates a failure to exhaust, the court should grant defendant's motion for summary
7 judgment. Albino, 747 F.3d at 1166. On the other hand, if there are material facts in dispute, the
8 court should deny defendant's motion for summary judgment. Id.

9 **UNDISPUTED MATERIAL FACTS PERTAINING TO EXHAUSTION**

10 The evidence submitted by the parties in support of, and in opposition to, the instant
11 motion for summary judgment establishes the following:

- 12 • Plaintiff began the administrative inmate grievance process after being transferred to
13 California Correctional Institution in Tehachapi, California. (DSUF 20.)
- 14 • Plaintiff filed a first level inmate grievance on CDCR Form 602, dated June 24, 2010,
15 regarding his treatment by nurses at CSP-Solano during the period of June 4 – 13,
16 2010. (DSUF 19; Declaration of K. Robinson ("Decl. K. Robinson") ¶¶ 4, ECF
17 No. 39-5.)
- 18 • Plaintiff was sent a screening letter by prison officials, dated 6/29/10, which provided
19 in pertinent part:

20 Tracking #: IA-03-2010-12067

21 Your appeal is being returned to you for the following reasons:

22 The action or decision being appealed is not within the
23 jurisdiction of CCI.

24 Comment:

25 **YOUR APPEAL HAS BEEN FORWARD TO CMF AS THE
26 COMPLAINT CONCERNS STAFF AT THAT INSTITUTION.**

27 NOTE: This screening action may not be appealed unless you
28 allege that the above reason(s) is inaccurate. In such case, return
this form and your appeal to the Health Care Appeals Office with
the necessary information.

1 HEALTH CARE APPEALS COORDINATOR 6/29/10

2 California Correctional Institution

3 (Decl. K. Robinson Ex. A-3.)

- 4 • Plaintiff's inmate grievance was forwarded from CCI to California Medical Facility
5 ("CMF"). (Decl. K. Robinson ¶ 4.)
- 6 • Plaintiff's inmate grievance was then forwarded from CMF to CSP-Solano, where it
7 arrived on July 26, 2010. (Decl. K. Robinson ¶ 4.)
- 8 • On July 26, 2010, plaintiff's inmate grievance was logged as a medical appeal because
9 it involved plaintiff's disagreement with the treatment he received. It was forwarded
10 to the Chief Executive Officer of Health Care Services at CSP-Solano to determine
11 whether it met the criteria to be considered a staff complaint. (DSUF 21.)
- 12 • On August 4, 2010, plaintiff's inmate grievance was determined not to meet the
13 requirements for processing as a staff complaint. (DSUF 22.)
- 14 • Plaintiff was sent a screening letter by prison officials, dated 4-8-10,² which provided
15 in pertinent part:

16 Tracking #: IA-24-2010-12949

17 Your appeal is being returned to you for the following reasons:

18 [BLANK]

19 Comment:

20 Per Title 15 Section 3084.3 C (1) The action or decision being
21 appealed is not within the jurisdiction of the department.

22 NOTE: This screening action may not be appealed unless you
23 allege that the above reason(s) is inaccurate. In such case, return
24 this form and your appeal to the Health Care Appeals Office with
25 the necessary information.

26 [ILLEGIBLE SIGNATURE] HCAC 4-8-10

27 R. FLEISCHMAN, AGPA

28 HEALTH CARE APPEALS COORDINATOR

² Defendants argue that this was a typographical error, and should have read "8-4-10." (See Decl. K. Robinson ¶ 5; DSUF 23.)

1 California State Prison, Solano

2 (Decl. K. Robinson Ex. A-5.)

- 3 • Plaintiff did not appeal the denial of his inmate grievance. (DSUF 27.)
- 4 • The procedures and critical deadlines for medical grievances were the same as for
- 5 other inmate grievances as set forth in California Code of Regulations, Title 15.
- 6 (DSUF 10.)

7 **ANALYSIS**

8 The question for the court is whether plaintiff exhausted his administrative remedies

9 regarding his claims against the defendants which are set forth in his complaint pending before

10 the court, and if he did not, whether plaintiff's failure to meet the pre-filing exhaustion

11 requirement may be excused. See Sapp, 623 F.3d at 823-24.

12 In order to meet their initial burden as the moving party, defendants need only show "that

13 there was an available administrative remedy, and that the prisoner did not exhaust that available

14 remedy." Albino, 747 F.3d at 1172. Defendant's undisputed evidence establishes that plaintiff

15 filed an initial inmate grievance regarding the incident underlying this civil action, and that he

16 failed to appeal that inmate grievance to the second or third levels of appeal, as required by the

17 California regulations that were then in effect. See Cal. Code Regs. tit. 15, § 3084.5 (titled

18 "Levels of Appeal Review and Disposition"). Therefore, defendants have met their initial burden

19 of demonstrating plaintiff's non-exhaustion.

20 Consequently, the burden shifts to plaintiff to plaintiff to come forward with evidence

21 "showing that there is something in his particular case that made the existing and generally

22 available administrative remedies effectively unavailable to him." Id. The Ninth Circuit has

23 recognized that administrative remedies may be rendered effectively unavailable if prison

24 officials improperly screen out an inmate appeal. Sapp, 623 F.3d at 822-23. To satisfy this

25 exception to the exhaustion requirement, a plaintiff must show "(1) that he actually filed a

26 grievance or grievances that, if pursued through all levels of administrative appeals, would have

27 sufficed to exhaust the claim that he seeks to pursue in federal court, and (2) that prison officials

28 ////

1 screened his grievance or grievances for reasons inconsistent with or unsupported by applicable
2 regulations.” Id. at 823–24.

3 Under the first element, “[a] grievance suffices to exhaust a claim if it puts the prison on
4 adequate notice of the problem for which the prisoner seeks redress.” Id. at 824. “To provide
5 adequate notice, the prisoner need only provide the level of detail required by the prison’s
6 regulations.” Id. (quoting Jones, 549 U.S. at 218). The California regulation then in effect
7 required only that an inmate submitting an inmate grievance on Form 602 “describe the problem
8 and action requested.” Cal. Code Regs. tit. 15, § 3084.2(a) (2009). Inspection of the Form 602
9 submitted by plaintiff regarding the incident in question shows that he complained of (i) receiving
10 injections despite informing the administering nurse of his fear of needles, and despite the fact
11 that oral medications were available, (ii) removal of a fan after the ventilation system failed, and
12 (iii) being told to kill himself. (ECF No. 39-5 at 4-5.) These are the same allegations upon which
13 plaintiff is proceeding against defendants in this civil action. In short, plaintiff’s inmate
14 grievance filed at the first-level ought to have alerted prison officials to the nature of his
15 complaints about defendants’ actions. Plaintiff has therefore satisfied the first element of the test
16 for whether prison officials made administrative remedies effectively unavailable to him.

17 To satisfy the second element, plaintiff must show that prison officials denied his inmate
18 grievance for reasons inconsistent with or unsupported by applicable regulations. Sapp, 623 F.3d
19 at 824. On review, it appears that prison officials’ asserted reason for denying plaintiff’s
20 grievance was inconsistent with the procedural requirements of California Code of Regulations,
21 title 15, § 3084.3.

22 The undisputed facts set forth above include the following:

- 23 • On July 26, 2010, plaintiff’s grievance was logged as a medical appeal because it
24 involved plaintiff’s disagreement with the treatment he received. The grievance was
25 then forwarded to the Chief Executive Officer of Health Care Services at CSP-Solano
26 to determine whether it met the criteria to be considered a staff complaint. (DSUF
27 21.)

- 1 • On August 4, 2010, the grievance was determined not to meet the requirements for
2 processing as a staff complaint. (DSUF 22.)

3 But the screening letter sent to plaintiff by prison officials did not state that his inmate
4 grievance failed to meet the requirements for assignment as a staff complaint. Rather, the only
5 substantive content in the letter was the following sentence: “Per Title 15 Section 3084.3 C (1)
6 The action or decision being appealed is not within the jurisdiction of the department.”³ An
7 empty blank appeared under the provision that reads, “Your appeal is being returned to you for
8 the following reasons:[.]” No further explanation for the denial of the inmate grievance was
9 given. This denial must be read in light of the undisputed fact that “[t]he procedures and critical
10 deadlines for medical grievances were the same as for other inmate grievances as set forth in
11 California Code of Regulations, Title 15.” (DSUF 10.) California Code of Regulations, title 15,
12 § 3084.3(d), as then framed, provided:

13 (d) Written rejection. When rejecting an appeal, the appeals
14 coordinator shall complete an Appeals Screening Form . . .
 explaining why the appeal is unacceptable.

15 In this case, prison officials failed to meet this requirement because they provided no
16 reason for the denial of the inmate grievance other than the quoted regulatory language regarding
17 lack of jurisdiction, which was framed by them merely as a “comment.” The absence of any
18 reason for the denial of plaintiff’s inmate grievance rendered that denial inconsistent with the
19 applicable regulations, particularly since prison officials’ failed to direct plaintiff to an agency
20 which might have jurisdiction over his inmate grievance. Absent this information, plaintiff could
21 not know whether he should file his inmate grievance elsewhere, or appeal the denial of the
22 grievance for lack of jurisdiction, or as he did, simply proceed to file suit.

23 It also appears that, as a substantive matter, the rejection of plaintiff’s inmate grievance
24 was inconsistent with the applicable regulations. As already discussed, plaintiff’s inmate
25 grievance put prison officials on sufficient notice regarding the nature of his complaint. Under
26 then-effective regulations, prisoners had the right to appeal administratively “any departmental

27 ³ At the time of the incident in question, § 3084.3(c)(1) provided that an inmate appeal could be
28 rejected if “[t]he action or decision being appealed [wa]s not within the jurisdiction of the
 department.” Cal. Code Regs. tit. 15, § 3084.3(c) (2010).

1 decision, action, condition or policy which they can demonstrate as having an adverse effect upon
2 their welfare.” Cal. Code Regs. tit. 15, § 3084.1(a) (2009). Yet defendants claim that they lacked
3 jurisdiction over plaintiff’s inmate grievance because – for reasons unspecified in their motion –
4 that grievance failed to meet the requirements for processing as a staff complaint. In this regard,
5 defendants appear to be taking inconsistent positions: that prison officials were subject to the
6 applicable regulations (including the broad provisions of § 3084.1(a)) and that these same
7 officials simultaneously lacked jurisdiction over plaintiff’s inmate grievance.

8 The court’s own research has uncovered only three prior cases that address whether an
9 inmate properly exhausted administrative remedies after being informed that his or her inmate
10 grievance was deemed to be “not within the jurisdiction of the department” under § 3084.3(c)(1).
11 See Johnson v. Terhune, No. 2:01-cv-01033-FCD-PAN, 2006 WL 581179 (E.D. Cal. Mar 8,
12 2006) (recommending denial of motion to dismiss for failure to exhaust administrative remedies
13 on grounds that, once prison officials informed the inmate that his grievance was untimely and
14 that they lacked jurisdiction, “there were no administrative remedies left available to him.”),
15 adopted by 2006 WL 931768 (E.D. Cal. Apr. 11, 2006); Walker v. McDonald, No. 2:10-CV-
16 2835-KJM-CKD, 2011 WL 5513446 (E.D. Cal. Nov. 10, 2011) (recommending denial of a
17 motion to dismiss for failure to exhaust administrative remedies prior to filing suit on the grounds
18 that prison officials failed to inform the inmate why they lacked jurisdiction over his grievance),
19 adopted in pertinent part by unpublished order dated Jan. 6, 2012 (ECF No. 28); Hines v.
20 Noriega, No. 2:13-CV-0392-JAM-AC, 2015 WL 1021313 (E.D. Cal. Mr. 9, 2015)
21 (recommending the denial of summary judgment for failure to exhaust administrative remedies
22 prior to filing suit on the grounds that the inmate grievance was wrongly cancelled as time-
23 barred).

24 Of these decisions, Walker is the most on-point. There, the plaintiff filed an inmate
25 grievance alleging that correctional officers placed him in mechanical restraints (handcuffs
26 attached to a waist chain), and then failed to hold onto the waist chain; while walking, plaintiff
27 slipped on ice and fell, breaking his shoulder bone. Walker, 2011 WL 5513446 at *1. The
28 plaintiff timely filed an inmate grievance, to which he received the following response from

1 prison officials:

2 The action or decision being appealed is not within the jurisdiction
3 of the department. We are returning the documents to you so you
4 may pursue the matter through the appropriate agency. (CCR
3084.3(c)(1)).

5 Id. at *2. The plaintiff failed to appeal this denial any further. Consequently, after he filed suit,
6 the defendants moved to dismiss the action for failure to exhaust administrative remedies prior to
7 filing suit as required. The assigned magistrate judge recommended that the motion to dismiss be
8 denied, writing:

9 Title 15 of the California Administrative Code § 3084.1 provides
10 that inmates may utilize the CDCR grievance process for “review
11 of departmental policies, decisions, actions, conditions, or
12 omissions that have a material adverse effect on the welfare of
13 inmates and parolees.” In light of such expansive criteria, and the
14 fact that defendants fail to offer any reason why there was no
15 “jurisdiction” to hear plaintiff’s grievance at the first formal level,
16 the court cannot find that plaintiff failed to exhaust available
administrative remedies. On the record before the court, plaintiff
did what he was required to do and then was shut-out of the
grievance process for a reason which appears to run afoul of the
regulations for the inmate grievance process. Defendants’ motion to
dismiss for failure to exhaust administrative remedies should be
denied.

17 Id. The reasoning of the court in Walker is equally applicable here, if not more so. As in
18 Walker, the plaintiff in this action was given no “reason why there was no ‘jurisdiction’ to hear
19 [his] grievance at the first formal level.” Id. If anything, plaintiff in this case was given even less
20 information than the plaintiff in Walker, who was at least advised by prison officials that he could
21 “pursue the matter through the appropriate agency.” Id.

22 In sum, prison officials’ failure to provide plaintiff with any factual basis for the denial of
23 his inmate grievance was inconsistent with applicable regulations, both procedurally (for failing
24 to explain why the inmate grievance was deemed to be unacceptable) and substantively (given the
25 broad scope of permissible grievances). Plaintiff has therefore satisfied the second element of the
26 exception-to-exhaustion test. Because plaintiff was effectively denied administrative remedies,
27 his failure to exhaust such remedies prior to filing suit ought to be excused.

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1 Defendants cite to evidence that plaintiff previously submitted two prior inmate
2 grievances to the second level of review, which “demonstrates [that] he knew how to navigate
3 CDCR’s grievance system, that it consisted of multiple levels of review, and that potential relief
4 remained available.” (Reply, ECF No. 48 at 5.) However, there is nothing before the court to
5 show what information was provided to plaintiff by prison officials in those other instances
6 regarding the reasons for denial of his grievances at the first level of review. Defendants’
7 argument would carry more weight if, e.g., it was shown that plaintiff proceeded to the second
8 level of review in those prior instances despite receiving the same sort of cursory denial of his
9 inmate grievances. Absent such evidence, defendants cannot overcome plaintiff’s showing that
10 there was “something” – i.e., the defective screening letter – “in this particular case that made the
11 existing and generally available administrative remedies effectively unavailable to [plaintiff].”
12 Albino, 747 F.3d at 1172.

13 Accordingly, based on the evidence presented in connection with the pending motion for
14 summary judgment, the undersigned recommends that defendants’ motion for summary judgment
15 on failure to exhaust grounds be denied.

17 CONCLUSION

18 For the reasons set forth above, IT IS HEREBY ORDERED that:

19 1. The Clerk of the Court randomly assign a district judge to this action.

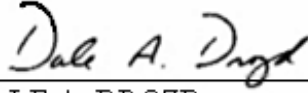
20 IT IS HEREBY RECOMMENDED that:

21 1. Defendants’ motion for summary judgment based on plaintiff’s failure to exhaust
22 administrative remedies prior to filing suit as required (ECF No. 39) be denied.

23 These findings and recommendations are submitted to the United States District Judge
24 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
25 after being served with these findings and recommendations, any party may file written
26 objections with the court and serve a copy on all parties. Such a document should be captioned
27 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
28 objections shall be filed and served within seven days after service of the objections. The parties

1 are advised that failure to file objections within the specified time may waive the right to appeal
2 the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 Dated: May 20, 2015

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6 DALE A. DROZD
7 UNITED STATES MAGISTRATE JUDGE

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