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## UNITED STATES DISTRICT COURT

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## FOR THE EASTERN DISTRICT OF CALIFORNIA

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KENNETH HARVEY,

No. 2:12-cv-02029 KJM DB

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Plaintiff,

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v.

ORDER

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J. BARBOUR,

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Defendant.

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Plaintiff, a state prisoner proceeding pro se, filed this civil rights action seeking relief under 42 U.S.C. § 1983 alleging defendant Barbour forced him to do strenuous manual labor contrary to his medical orders in violation of his First and Eighth Amendment rights. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

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On March 1, 2017, the magistrate judge filed findings and recommendations, 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. (ECF No. 50.) Neither party has filed objections to the findings and recommendations.

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The court presumes that any findings of fact are correct. *See Orand v. United States*, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge's conclusions of law are reviewed de novo. *See Britt v. Simi Valley Unified School Dist.*, 708 F.2d 452, 454 (9th Cir. 1983). Having reviewed

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1 the file, the court finds the findings and recommendations to be supported by the record and by  
2 the proper analysis.

3 Accordingly, IT IS HEREBY ORDERED that:

4 1. The findings and recommendations filed March 1, 2017 (ECF No. 55) are adopted  
5 in full;

6 2. Defendant Barbour's partial motion for summary judgment for failure to exhaust  
7 administrative remedies is granted; and

8 3. Plaintiff's claim for deliberate indifference is dismissed.

9 DATED: March 21, 2017

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12 UNITED STATES DISTRICT JUDGE  
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