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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JOHNNY LEE HOWZE,  
  
Plaintiff,  
  
v.  
  
T. BUTLER, E. GROUT, and A.  
OROZCO,  
  
Defendants.

No. 2:14-cv-02069-GEB-CKD

**ORDER**

Plaintiff, a state prisoner proceeding pro se, filed this civil rights action seeking relief under 42 U.S.C. § 1983, alleging Defendants violated the Eighth Amendment to the United States Constitution by failing to assign him single-cell status contrary to a medical recommendation.

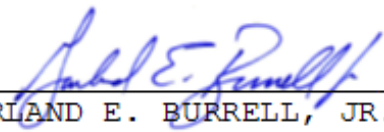
Defendants move for summary judgment on the ground that Plaintiff failed to exhaust his administrative remedies as required under the Prison Litigation Reform Act ("PLRA"). (Defs.' Mem. P.&A. ISO Mot. Summ. J. ("MSJ"), ECF No. 23-1.) Defendants also move to dismiss Plaintiff's Complaint under Federal Rule of Civil Procedure 12(b)(6) for failing to "allege facts supporting the subjective component of his Eighth Amendment claim." (Mem. P.&A. ISO Mot. Dismiss 6:9-11, ECF No. 22-1.)

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

1 July 9, 2015, the Magistrate Judge filed findings and  
2 recommendations ("F&Rs"), which were served on all parties, and  
3 which contain notice to the parties that any objections to the  
4 findings and recommendations were to be filed within fourteen  
5 days. (ECF No. 43.) Plaintiff filed objections to the findings  
6 and recommendations, and Defendants filed a reply to Plaintiff's  
7 objections. (ECF Nos. 46, 47.)

8 The Magistrate Judge recommended in the F&Rs that the  
9 complaint be dismissed with prejudice, concluding it is  
10 duplicative of an action Plaintiff filed in the Central District  
11 of California, Howze v. CDCR, et al., Case No. 2:14-cv-04067-SVW-  
12 RAO. (F&Rs 1:26-28, 2:24-25.) Therefore, the Magistrate Judge did  
13 not reach the merits of either of Defendants' pending motions.  
14 Although Plaintiff alleges in both cases that the Eighth  
15 Amendment was violated by correctional officials' failure to  
16 assign him single-cell status, the two cases concern Plaintiff's  
17 incarceration at different correctional facilities and are made  
18 against different individual defendants. The Central District  
19 case concerns Plaintiff's incarceration at the California Men's  
20 Colony-East in San Luis Obispo, whereas this case concerns  
21 Plaintiff's incarceration at Folsom State Prison. (See Compl.,  
22 ECF No. 1; Compl. in Central District Case No. 2:14-cv-04067-  
23 SVW-RAO, ECF No. 1-1.) Therefore, the undersigned judge rejects  
24 the F&Rs and refers the matter back to the Magistrate Judge.

25 Dated: September 3, 2015

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GARIAND E. BURRELL, JR.  
Senior United States District Judge