

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DANIEL WEBSTER WRIGHT,
Plaintiff,
v.
D. FIELDS, et al.,
Defendants.

No. 2:15-cv-2291-KJM-EFB P

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 in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On February 10, 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. Plaintiff and defendant Darling have filed objections to the findings and recommendations and defendant Fields has filed a response to plaintiff’s objections.

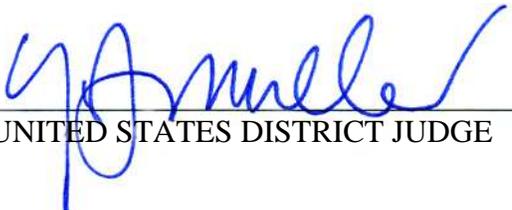
In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a *de novo* review of this case. Having carefully reviewed the file, the court finds the findings and recommendations to be supported by the record and by proper analysis. Resolution of defendant Darling’s objection that dismissal of this action should be with prejudice

1 is controlled by *Lira v. Herrera*, which requires dismissal of “a case without prejudice ‘when
2 there is no presuit exhaustion,’” 427 F.3d 1164, 1170 (9th Cir. 2005) (quoting *McKinney v.*
3 *Carey*, 311 F.3d 1198, 1200 (9th Cir. 2002)).

4 Accordingly, IT IS HEREBY ORDERED that:

- 5 1. The findings and recommendations filed February 10, 2017, are adopted in full; and
- 6 2. Defendants’ motion for summary judgment (ECF No. 20) is granted and plaintiff’s
7 claims against defendants are dismissed without prejudice for failure to exhaust administrative
8 remedies.

9 DATED: March 27, 2017

10
11 
12 _____
13 UNITED STATES DISTRICT JUDGE
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28