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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KARIMI SUTTON,

 Plaintiff,

 v.

G. GEISSNER, et al.,

 Defendants.

No. 2:16-cv-2369-KJM-EFB P

ORDER

Plaintiff, a state prisoner now 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 as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On May 13, 2020, 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. After extensions of time, plaintiff has filed objections to the findings and recommendations and defendants have responded to those objections. ECF Nos. 44, 49.

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 reviewed the file, the court finds the findings and recommendations to be supported by the record and by the proper analysis. The court writes separately here to address plaintiff’s objection that he did exhaust the claims in

1 grievance number HDSP-D-15-01267. *See generally* Objections, ECF No. 44. That grievance
2 bypassed the first level of review and was granted in part and denied in part at the second level.
3 *See id.* (citing Opp'n Ex. D, ECF No. 37). Plaintiff's third-level appeal was cancelled for
4 exceeding time limits, and he did not appeal the cancellation. *See* Spaich Decl. Ex. C, ECF
5 No. 28-5. The magistrate judge therefore correctly found that plaintiff had not exhausted his
6 administrative remedies, as required by the Prison Litigation Reform Act. *See, e.g., Vaughn v.*
7 *Hood*, No. 14-2235, 2015 WL 5020691, at *8-9 (E.D. Cal. Aug. 21, 2015), *aff'd*, 670 F. App'x
8 962 (9th Cir. 2016) (unpublished); *see also Woodford v. Ngo*, 548 U.S. 81, 90 (2006). Plaintiff
9 argues in objection to the magistrate judge's findings and recommendations that correctional staff
10 prevented him from filing a timely appeal. He could have raised that claim in an appeal of the
11 cancellation decision, but he did not do so.

12 Given the court's resolution of plaintiff's objection, defendant's request for a hearing is
13 moot.

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. The findings and recommendations filed May 13, 2020, are adopted in full;
- 16 2. Defendants' motion for summary judgment (ECF No. 28) is GRANTED and plaintiff's
17 claim against them are DISMISSED without prejudice for failure to exhaust administrative
18 remedies; and
- 19 3. The clerk of the court shall close this case.

20 DATED: April 1, 2021.

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24 CHIEF UNITED STATES DISTRICT JUDGE
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