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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LISA MARIE BELYEW,  
  
Plaintiff,  
  
v.  
  
KORY L. HONEA, et al.,  
  
Defendants.

No. 2:17-cv-0508 KJM AC 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 as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On September 30, 2022, 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 twenty-one days. ECF No. 73. Plaintiff has filed objections to the findings and recommendations (ECF No. 74), to which defendants have responded (ECF No. 75).

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, except for sections IV(D)(i) and IV(F). Sections IV(D)(i) and IV(F) contain a discussion and analysis of

1 the merits of plaintiff's first claim for relief, which arises from a strip search conducted on  
2 plaintiff on December 24, 2016 by defendant Moreland. Review of the record shows plaintiff  
3 signed the operative complaint in this action, the first amended complaint, under penalty of  
4 perjury. *See* ECF No. 23 at 6. The first amended complaint is properly considered as an affidavit  
5 in opposition to defendants' motion for summary judgment to the extent it contains admissible  
6 evidence within plaintiff's personal knowledge. *See Schroeder v. McDonald*,  
7 55 F.3d 454, 460 (9th Cir. 1995). Plaintiff's factual averments in Claim One of the first amended  
8 complaint are as follows:

9           On or about December 24, 2016 I was strip-searched and forced to  
10 squat and cough multiple times by Officer Moreland. I informed  
11 MORELAND that I had severe back and knee problems that  
12 prevented me from bending at my knees. MORELAND then told  
13 me to place my face on the floor of the shower. I told her I did not  
14 want to do this because it could put me in danger of contracting  
15 Hepatitis A, B, C, HIV and/or Herpes. MORELAND threatened that  
16 if I did not do it she would get some other officers and make me do  
17 it. MORELAND made me cough and spread my anus and vagina  
18 until she could "see inside." Then I heard MORELAND tell a male  
19 officer who was standing outside the door while this process was  
20 going on, the door was kept open, and she told him "I don't trust her  
21 because she 'leaked' on herself.["] Because of my extensive history  
22 of sexual/physical abuse and rape this caused me extreme  
23 psychological trauma and physical pain because my knee gave out  
24 on me. I filed a grievance on MORELAND for this. I filed a  
25 grievance for this incident on or about December 30, 2019 and it was  
26 denied.

19 ECF No. 23 at 3. These averments call into question the magistrate judge's findings that  
20 defendants have established as undisputed that "the search was conducted in a private area and in  
21 a professional manner" and that defendant Moreland did not require plaintiff to go through search  
22 procedures "more times than was necessary to properly complete the search." ECF No. 73 at 16-  
23 17. Good cause appearing, this matter will be referred back to the assigned magistrate judge for  
24 further findings and recommendations on the merits of plaintiff's claim against defendant  
25 Moreland, and, as appropriate, findings and recommendations on defendant Moreland's qualified  
26 immunity defense.

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1           Accordingly, IT IS HEREBY ORDERED that:

2           1. The findings and recommendations filed September 30, 2022, are adopted except as to  
3 sections IV(D)(i) and IV(F);

4           2. Defendants' motion for summary judgment (ECF No. 65) is granted in part and denied  
5 in part as follows:

6                   a. Granted with respect to Claims Two and Three on the ground that plaintiff did  
7 not exhaust her administrative remedies prior to filing suit; and

8                   b. Denied with respect to Claim One on the ground that plaintiff did not exhaust  
9 her administrative remedies; and

10           3. This matter is referred back to the assigned magistrate judge for further findings and  
11 recommendations consistent with this order.

12 DATED: January 17, 2023.

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16 CHIEF UNITED STATES DISTRICT JUDGE  
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