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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 DEREK TATE,

12 Plaintiff,

13 v.

14 J. ANDRES,

15 Defendant.
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No. 2:18-cv-0822 KJM AC P

ORDER

17 Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief
18 under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge as provided
19 by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

20 On April 13, 2022, the magistrate judge filed findings and recommendations, which were
21 served on all parties and which contained notice to all parties that any objections to the findings
22 and recommendations were to be filed within twenty-one days. ECF No. 82. Plaintiff has filed
23 objections to the findings and recommendations, ECF No. 83, to which defendant has responded,
24 ECF No. 85.


25 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this
26 court has conducted a *de novo* review of this case. Having reviewed the file, the court finds the
27 findings and recommendations to be supported by the record and by the proper analysis.

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1 Accordingly, IT IS HEREBY ORDERED that:

- 2 1. The findings and recommendations filed April 13, 2022 (ECF No. 82), are adopted in
3 full;
4 2. Defendant's motion for partial summary judgment (ECF No. 72) is granted;
5 3. Plaintiff's claim of retaliation against defendant Andres is dismissed without
6 prejudice for failure to exhaust administrative remedies; and
7 4. This case will proceed on plaintiff's excessive force claim against defendant Andres.
8 5. This matter is referred back to the assigned magistrate judge for all further pretrial
9 proceedings.

10 DATED: August 29, 2022

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13 CHIEF UNITED STATES DISTRICT JUDGE
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