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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAVANCE ROSS PAYNE,  
Plaintiff,  
v.  
C. BASER, et al.,  
Defendants.

No. 2:18-cv-0956 JAM CKD 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 pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On May 1, 2019, the magistrate judge filed findings and recommendations herein 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. Defendants have filed objections to the findings and recommendations.

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 entire file, the court does not find the findings and recommendations to be supported by the record and by proper analysis. Plaintiff admits he did not exhaust his administrative remedies and he has not provided a valid legal excuse for failing to do so. Vaughn v. Hood, 670 F. App'x 962, 963 (9<sup>th</sup>

1 Cir. 2016).

2 Accordingly, IT IS HEREBY ORDERED that:

3 1. The findings and recommendations filed May 1, 2019 are not adopted in full;

4 2. Defendant Baser and Crisanto's motion to dismiss (ECF No. 16) is granted without  
5 prejudice; and

6 3. Plaintiff shall file his amended complaint within 20 days.

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8 Dated: July 25, 2019

/s/ John A. Mendez  
HONORABLE JOHN A. MENDEZ  
United States District Court Judge

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