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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 RAUL ARRELLANO,

12 Plaintiff,

13 v.

14 BLAHNIK,

15 Defendant.
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Case No.: 16cv2412-CAB-MSB

ORDER: (1) ADOPTING REPORT AND RECOMMENDATION [Doc. No. 160]; (2) REJECTING DEFENDANT’S OBJECTIONS [Doc. No. 161]; (3) DENYING DEFENDANT’S MOTION FOR SUMMARY JUDGMENT [Doc. No. 134]; AND (4) SETTING TELEPHONIC STATUS CONFERENCE

20 Plaintiff Raul Arellano (“Plaintiff”), a state prisoner proceeding pro se and in
21 forma pauperis, filed his complaint in this case on September 23, 2016, alleging
22 Defendant Blahnik (“Defendant”) violated his rights under 42 U.S.C. §1983. [Doc. No.
23 1.] On December 12, 2019, Defendant filed a motion for summary judgment. [Doc. No.
24 134.] On March 5, 2020, Plaintiff filed an opposition. [Doc. No. 150.] On March 13,
25 2020, Defendant filed a reply. [Doc. No. 151.] On March 30, 2020, Plaintiff filed a sur-
26 reply. [Doc. No. 153.]

27 On July 2, 2020, Magistrate Judge Michael S. Berg issued a Report and
28 Recommendation regarding Defendant’s motion for summary judgment (the “Report”),

1 recommending that Defendant’s motion be denied. [Doc. No. 160.] On July 20, 2020,
2 Defendant filed objections to the Report. [Doc. No. 161.] On August 5, 2020, Plaintiff
3 filed a reply to Defendant’s objections. [Doc. No. 162.] Having reviewed the matter de
4 novo and for the reasons that follow, the Report is **ADOPTED**, Defendant’s objections
5 are **REJECTED**, and the motion for summary judgment is **DENIED**.

6 REVIEW OF REPORT AND RECOMMENDATION

7 The duties of the district court in connection with a report and recommendation of
8 a magistrate judge are set forth in Federal Rules of Civil Procedure 72(b) and 28 U.S.C. §
9 636(b). The district judge must “make a de novo determination of those portions of the
10 report . . . to which objection is made,” and “may accept, reject, or modify, in whole or in
11 part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. §
12 636(b). The district court need not review de novo those portions of a report and
13 recommendation to which neither party objects. See *Wang v. Masaitis*, 416 F.3d 992,
14 1000 n. 13 (9th Cir. 2005); *U.S. v. Reyna-Tapia*, 328 F.3d 1114, 1121-22 (9th Cir. 2003)
15 (en banc).

16 DISCUSSION

17 A. Collateral Estoppel (Issue Preclusion).

18 Defendant argues that because the issue of exhaustion of administrative remedies was
19 decided against Plaintiff in a previous state habeas corpus action connected to Defendant
20 Blahnik’s loss of his legal papers, Plaintiff should be precluded from arguing he
21 exhausted his administrative remedies in this case. [Doc. No. 134 at 21.] Magistrate
22 Judge Berg concluded that the standard for exhaustion of administrative remedies is
23 different for state habeas petitions than under the federal PLRA and, therefore, issue
24 preclusion does not apply. [Doc. No. 160 at 5-10.] Defendant does not object to this
25 portion of the Report. Nevertheless, this Court has reviewed the matter of issue
26 preclusion de novo and agrees with Magistrate Judge Berg that issue preclusion does not
27 apply here, as the standard for exhaustion is different in state habeas petitions. See,
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1 Report at 9, and cases cited therein. Therefore, Defendant’s motion for summary
2 judgment based on issue preclusion is **DENIED**.

3 B. Administrative Exhaustion.

4 Defendant argues that Plaintiff failed to exhaust his administrative remedies regarding
5 the lost paperwork issue before bringing this action. [Doc. No. 134 at 21.] Magistrate
6 Judge Berg concluded that there are disputed issues of material fact as to whether
7 Plaintiff submitted Grievance 4029 a third time and whether it was obstructed or ignored.
8 [Doc. No. 160 at 20.] Magistrate Judge Berg also concluded that the Grievance Rewrite
9 [Doc. No. 134 at 60-65] was sufficient on its face to alert prison officials to Plaintiff’s
10 attempt to seek redress for the lost paperwork issue. [Doc. No. 160 at 21.] Defendant
11 objects to both findings.

- 12 1. Finding that the Grievance Rewrite put “prison staff on notice” that the lost
13 paperwork issue was “the wrong that Plaintiff sought to remedy.”

14 Defendant objects to this finding because the Grievance Rewrite clearly listed the yard
15 move as the chosen issue. [Doc. No. 161 at 4.] If the first page of the Grievance Rewrite
16 is viewed in a vacuum, then it is possible it would not put prison staff on notice that the
17 lost paperwork was the issue Plaintiff wanted resolved. However, when viewed in
18 conjunction with the attachments to the Grievance Rewrite, as well as Plaintiff’s other
19 submissions, especially the handwritten notations on the rejection notices (see below), it
20 is simply unclear on summary judgment whether prison officials were on notice of the
21 lost paperwork issue. Therefore, Defendant’s objection to this finding is **REJECTED**
22 because the question of whether prison staff was on notice of the lost paperwork issue
23 cannot be determined on summary judgment.

- 24 2. Finding of factual dispute as to whether Plaintiff re-submitted the December 3,
25 2014 grievance after its December 24, 2014 rejection.

26 Defendant objects to this finding because, even if the December 3, 2014 grievance
27 was resubmitted it could only have ever exhausted Plaintiff’s yard move request, since
28 that was the issue that was raised by that grievance. [Doc. No. 161 at 7.] However, this

1 Court agrees with Magistrate Berg’s conclusion that the record does not conclusively
2 show that Plaintiff’s assertion that he timely resubmitted the 4029 Grievance after its
3 December 24, 2014 rejection is not credible. [Doc. No. 160 at 20.] Plaintiff’s
4 handwritten notations on the various rejection notices [Doc. No. 134 at 55-57, 67]
5 suggest that Plaintiff resubmitted the rejection notices with the handwritten notations
6 sometime after December 24, 2014, and that he assumed this was adequate to pursue the
7 lost paperwork issue. As such, there is a factual dispute as to whether the handwritten
8 notations could reasonably constitute a grievance and whether prison staff obstructed or
9 ignored Plaintiff’s alleged resubmission of his grievance that was needed to fully exhaust
10 his claims. Given this factual dispute, Defendant’s objection is **OVERRULED**, and the
11 motion for summary judgment based upon failure to exhaust administrative remedies is
12 **DENIED**.

13 C. Access to Courts Claim.

14 Defendant argues that, even if he is responsible for the lost documents, the contents of
15 those documents would not have resulted in a successful habeas petition, thereby
16 disproving Plaintiff’s contention he was frustrated in his efforts to file a nonfrivolous
17 claim. [Doc. No. 134 at 9.] Magistrate Judge Berg concluded that the alleged injury to
18 Plaintiff is not whether the habeas petition would have been successful, but whether
19 Plaintiff lost the opportunity to present a nonfrivolous claim. Magistrate Judge Berg also
20 pointed out that Defendant did not argue that the facts alleged by Plaintiff in support of
21 his underlying claims are “fantastical or delusional,” but instead only argued that
22 Plaintiff’s alleged facts do not adequately support his alleged habeas claims. [Doc. No.
23 160 at 38.] In his objections, Defendant now clarifies that his moving papers do show
24 that Plaintiff’s alleged facts regarding his alleged habeas claims are “fantastical or
25 delusional.” [Doc. No. 161 at 7-8.] However, a petition for writ of habeas corpus (which
26 is what Plaintiff alleges he intended to file) is “not facially frivolous.” *Sprinkle v.*
27 *Robinson (“Sprinkle I”)*, No. CIV S-02-1563 LKK EFB P., 2007 WL 2389984, at *7
28 (E.D. Cal. Aug. 27, 2007). And Plaintiff’s alleged facts supporting the alleged petition

1 cannot be said, at least on summary judgment, to be “fantastical or delusional.”
2 Therefore, Defendants objection is **OVERRULED**, and the motion for summary
3 judgment based upon failure to present an arguable habeas claim to support an access to
4 courts claim is **DENIED**.

5 **CONCLUSION**

6 For the reasons set forth above, the Court rules as follows:

- 7 1. The Report [Doc. No. 160] is **ADOPTED**;
- 8 2. Defendant’s Objections [Doc. No. 161] are **REJECTED**;
- 9 3. The Motion for Summary Judgment [Doc. No. 134] is **DENIED**;
- 10 4. A telephonic status conference before Judge Bencivengo to reset pretrial dates
11 is **HEREBY SCHEDULED** for **October 8, 2020** at **11:00 a.m.** Counsel for
12 Defendant is instructed to connect through an AT&T Teleconference
13 connection at (888) 398-2342, access code: 1749358. Counsel for Defendants
14 shall also arrange for Plaintiff’s telephonic appearance.

15 **IT IS SO ORDERED.**

16 Dated: September 28, 2020



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18 Hon. Cathy Ann Bencivengo
19 United States District Judge
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