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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

STEVE MICHAEL COX,  
Plaintiff,  
  
v.  
GLEN WHORTON, et al.,  
Defendants.

3:08-CV-110-RCJ(VPC)

**ORDER**

Before the Court is Plaintiff's Opposition to Magistrate Judge's Report (In Particular Count VII Issues) (#26) filed on May 13, 2009. This action was referred to U.S. Magistrate Judge Valerie P. Cooke pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4. The Magistrate Judge submitted her Report and Recommendation (#25) on April 30, 2009, recommending that this Court enter an order granting in part denying in part Defendants' Motion to Dismiss (#11). Defendants' Response to Plaintiff's Objection to Report and Recommendation (#31) was filed on May 29, 2009.

**I. ANALYSIS**

**A. Review of Magistrate Judge's Order**

Pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 3-2, a party may file specific written objections to the findings and recommendations of a magistrate judge made pursuant to LR IB 1-4. The district court must make a *de novo* determination of those portions of the

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1 magistrate judge's report to which objection is made and may accept, reject, or modify, in  
2 whole or in part, the findings or recommendations made by the magistrate judge. LR IB 3-2(b).  
3 *De novo* review means the court must consider the matter anew, the same as if it had not  
4 been heard before and as if no decision previously had been rendered. Ness v.  
5 Commissioner, 954 F.2d 1495, 1497 (9th Cir. 1992). Thus, although the district court need  
6 not hold a *de novo* hearing, the court's obligation is to arrive at its own independent conclusion  
7 about those portions of the magistrate judge's findings or recommendation to which objections  
8 are made. United States v. Remsing, 874 F.2d 614, 617 (9th Cir. 1989).

9 After conducting a *de novo* review of the record, the Court accepts and adopts the  
10 Magistrate Judge's Minutes of the Court (#25).

### 11 III. CONCLUSION

12 IT IS HEREBY ORDERED that the court ACCEPTS and ADOPTS in whole the Report  
13 and Recommendation of U.S. Magistrate Judge (#25), and Plaintiff's Opposition to Magistrate  
14 Judge's Report (In Particular Count VII Issues) (#26) is DENIED.

15 IT IS FURTHER ORDERED that Defendants' Motion to Dismiss (#11) is GRANTED as  
16 to:

- 17 1. All claims against defendants Miller, McDaniel, MacArthur, Whorton, D'Amico,  
18 Endel and Tripp, including those in Counts V, VII, and VIII;
- 19 2. All claims brought against all remaining defendants in their official capacities for  
20 money damages;
- 21 3. Count V – all claims against all defendants. These claims are barred by the  
22 doctrine of *res judicata*; and
- 23 4. Count VIII – Plaintiff's Eighth Amendment claims against defendant Lemich with  
24 regard to the November 2, 2005 alleged denial of medial care. Plaintiff failed to exhaust his  
25 administrative remedies.

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IT IS FURTHER ORDERED that Defendants' Motion to Dismiss (#11) is DENIED as

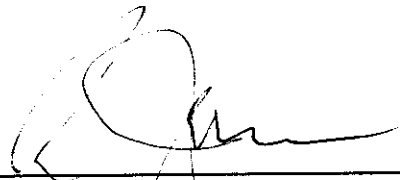
to:

1. Counts I and II;
2. Count VII – Plaintiff's claims against defendant Bishop; and
3. Count VIII – Plaintiff's First and Eighth Amendment claims against defendant Lemich with regard to the July 26, 2006 alleged retaliatory denial of medical care.

The Clerk of the Court shall enter judgment accordingly.

IT IS SO ORDERED.

DATED: This 29 day of October, 2009.



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Robert C. Jones  
UNITED STATES DISTRICT JUDGE