

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 RENARD T. POLK,

Case No. 3:16-cv-00652-MMD-CBC

5 Plaintiff,

ORDER REGARDING REPORT AND
RECOMMENDATION OF
MAGISTRATE JUDGE
CARLA B. CARRY

6 v.

7 TARA CARPENTER, et. al.,

8 Defendants.

9 **I. SUMMARY**

10 Before the Court is the Report and Recommendation of United States Magistrate
11 Judge Carla B. Carry (ECF No. 93) (“R&R” or “Recommendation”) relating to Plaintiff’s
12 motion for partial summary judgment (“Motion”) (ECF No. 63). Judge Carry
13 recommended that the Court deny Plaintiff’s Motion. Defendant James Donnelly filed a
14 non-opposition to the R&R (ECF No. 95), and Plaintiff filed objections (“Objections”)
15 (ECF No. 98). The Court has reviewed Defendant’s response (ECF No. 100).

16 **II. BACKGROUND**

17 The Court incorporates the background and procedural history from the R&R.
18 (See ECF No. 93 at 1-2.)

19 **III. LEGAL STANDARD**

20 **A. Review of the Magistrate Judge’s Recommendations**

21 This Court “may accept, reject, or modify, in whole or in part, the findings or
22 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party
23 timely objects to a magistrate judge’s report and recommendation, then the court is
24 required to “make a de novo determination of those portions of the [report and
25 recommendation] to which objection is made.” 28 U.S.C. § 636(b)(1).

26 In light of Plaintiff’s Objections, this Court finds it appropriate to engage in a de
27 novo review to determine whether to adopt Magistrate Judge Carry’s R&R. Upon

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1 reviewing the R&R and records in this case, this Court finds good cause to adopt the
2 Magistrate Judge's R&R in full.

3 **B. Summary Judgment Standard**

4 "The purpose of summary judgment is to avoid unnecessary trials when there is
5 no dispute as to the facts before the court." *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*,
6 18 F.3d 1468, 1471 (9th Cir. 1994). Summary judgment is appropriate when the
7 pleadings, the discovery and disclosure materials on file, and any affidavits "show there
8 is no genuine issue as to any material fact and that the movant is entitled to judgment as
9 a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986). An issue is
10 "genuine" if there is a sufficient evidentiary basis on which a reasonable fact-finder could
11 find for the nonmoving party and a dispute is "material" if it could affect the outcome of
12 the suit under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49
13 (1986). Where reasonable minds could differ on the material facts at issue, however,
14 summary judgment is not appropriate. See *id.* at 250-51. "The amount of evidence
15 necessary to raise a genuine issue of material fact is enough 'to require a jury or judge to
16 resolve the parties' differing versions of the truth at trial.'" *Aydin Corp. v. Loral Corp.*, 718
17 F.2d 897, 902 (9th Cir. 1983) (quoting *First Nat'l Bank v. Cities Service Co.*, 391 U.S.
18 253, 288-89 (1968)). In evaluating a summary judgment motion, a court views all facts
19 and draws all inferences in the light most favorable to the nonmoving party. *Kaiser*
20 *Cement Corp. v. Fishbach & Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986).

21 The moving party bears the burden of showing that there are no genuine issues
22 of material fact. *Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982). Once
23 the moving party satisfies Rule 56's requirements, the burden shifts to the party resisting
24 the motion to "set forth specific facts showing that there is a genuine issue for trial."
25 *Anderson*, 477 U.S. at 256. The nonmoving party "may not rely on denials in the
26 pleadings but must produce specific evidence, through affidavits or admissible discovery
27 material, to show that the dispute exists," *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404,
28 1409 (9th Cir. 1991), and "must do more than simply show that there is some

1 metaphysical doubt as to the material facts.” Orr v. Bank of Am., 285 F.3d 764, 783 (9th
2 Cir. 2002) (quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586
3 (1986)). “The mere existence of a scintilla of evidence in support of the plaintiff’s position
4 will be insufficient.” Anderson, 477 U.S. at 252.

5 **IV. DISCUSSION**

6 Judge Carry recommended denying Plaintiff’s motion for partial summary
7 judgment because Plaintiff did not present evidence that he has exhausted his
8 administrative remedies as to his First Amendment claim. (ECF No. 93 at 4.) Plaintiff still
9 does not adduce evidence that he exhausted his administrative remedies in his
10 Objections. (See ECF No. 98 at 1-4.) Thus, Plaintiff has failed to demonstrate the
11 absence of a genuine issue of material fact, just as Defendants failed earlier. (See ECF
12 No. 62.) The Court will adopt Judge Carry’s R&R and deny Plaintiff’s Motion.

13 **V. CONCLUSION**

14 It is therefore ordered, adjudged and decreed that the Report and
15 Recommendation of Magistrate Judge Carla B. Carry (ECF No. 93) is accepted and
16 adopted in full.

17 It is further ordered that Plaintiff’s Objections (ECF No. 98) are overruled.

18 It is further ordered that Plaintiff’s motion for partial summary judgment (ECF No.
19 63) is denied.

20 DATED THIS 21st day of October 2019.

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23 MIRANDA M. DU
24 CHIEF UNITED STATES DISTRICT JUDGE
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