UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SHADID AL-BARR aka DEWAYNE X. HARMON,

Plaintiff,

vs.

GAIL LEWIS, et al.,

Defendants.

/

1:03-cv-06148-REC-SMS-P

ORDER ADOPTING FINDINGS AND RECOMMENDATIONS (Doc. 43)

ORDER DENYING DEFENDANTS' MOTION TO DISMISS (Doc. 35)

ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (Doc. 41)

Plaintiff, Shadid Al-Barr aka Dewayne X. Harmon ("plaintiff"), is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 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 72-302.

On August 26, 2005, the Magistrate Judge filed a Findings and Recommendations herein which was served on the parties and which contained notice to the parties that any objections to the Findings and Recommendations were to be filed within thirty (30) days. On September 12, 2005, plaintiff filed objections to the

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Magistrate Judge's Findings and Recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 73-305, this Court has conducted a de novo review of this case. Having carefully reviewed the entire file, the Court finds the Findings and Recommendations to be supported by the record and by proper analysis.

Accordingly, IT IS HEREBY ORDERED that:

1. The Findings and Recommendations, filed August 26, 2005, is ADOPTED IN FULL;

2. Defendants' unenumerated Rule 12(b) motion, filed March 28, 2005, is DENIED on the ground that plaintiff exhausted; and,

3. Plaintiff's motion for summary judgment, filed May 16, 2005, is DENIED on the ground that it is procedurally deficient.

IT IS SO ORDERED.

Dated: October 11, 2005 **/s/ Robert E. Coyle**
668554 UNITED STATES DISTRICT JUDGE