

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION**

**RUSSELL BERGER,  
ADC #115855**

**PLAINTIFF**

**V.**

**CASE NO. 5:15-CV-262-JM-BD**

**DANNY BURL, et al.**

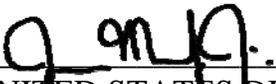
**DEFENDANTS**

**ORDER**

The Court has received a Partial Recommended Disposition (“Recommendation”) filed by Magistrate Judge Beth Deere. After careful review of the Recommendation, the timely objections, as well as a *de novo* review of the record, the Court concludes that the Recommendation should be, and hereby is, approved and adopted as this Court’s findings in all respects. The record is clear that, regardless of the characterization of evidence as being false or conflicting or of the ADC Defendants’ responses to Mr. Berger’s statement of facts as being disingenuous, questions of fact remain that preclude the granting of the ADC Defendants’ motion for summary on exhaustion.<sup>1</sup>

Mr. Berger’s motions for summary judgment (docket entries #26 and #64) and the Defendants’ motion for summary judgment on exhaustion (#43) are DENIED.

IT IS SO ORDERED, this 28<sup>th</sup> day of February, 2017.

  
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UNITED STATES DISTRICT JUDGE

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<sup>1</sup>Magistrate Judge Deere’s order inviting the ADC Defendants to supplement their motion (Document No. 55) spells out the questions of fact remaining.