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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 BRIAN ESPRITT,

12 Plaintiff,

13 vs.

14 A. SAESEE, et al.,

15 Defendants.
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1:11-cv-00519-AWI-GSA-PC

ORDER ADOPTING FINDINGS AND
RECOMMENDATION
(Doc. 67.)

ORDER DENYING DEFENDANTS'
MOTION TO DISMISS
(Doc. 56.)

ORDER FOR DEFENDANTS TO FILE
MOTION OR ANSWER WITHIN THIRTY
DAYS

19 Brian Espritt ("Plaintiff") is a state prisoner proceeding pro se in this civil rights action
20 pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge
21 pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

22 On September 15, 2014, [findings and recommendations](#) were entered, recommending
23 that Defendants' motion to dismiss be denied. (Doc. 67.) The parties were granted thirty days
24 in which to file objections to the findings and recommendations. To date, no objections have
25 been filed.

26 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, this
27 Court has conducted a de novo review of this case. Having carefully reviewed the entire file,
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1 the Court finds the findings and recommendations to be supported by the record and proper
2 analysis.

3 Accordingly, THE COURT HEREBY ORDERS that:

- 4 1. The Findings and Recommendations issued by the Magistrate Judge on
5 September 15, 2014, are ADOPTED IN FULL; and
- 6 2. Defendants' motion to dismiss, filed on May 7, 2014, is DENIED;
- 7 3. Within thirty days from the date of service of this order, Defendants shall either
8 file an answer to the Second Amended Complaint, or file a motion for summary
9 judgment pursuant to Albino v. Baca;¹ and
- 10 4. This case is referred back to the Magistrate Judge for further proceedings.

11 IT IS SO ORDERED.

12 Dated: November 15, 2014

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14 SENIOR DISTRICT JUDGE

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27 ¹ In Albino v. Baca, the Ninth Circuit held that a motion for summary judgment is the appropriate
28 procedural device for pretrial determination of whether administrative remedies have been exhausted under the
PLRA. Albino v. Baca, 747 F.3d 1162, 1170 (9th Cir. 2014).