

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA
9

10 MICHAEL ANTHONY TODD,
11 Plaintiff,
12 v.
13 P. JOHNSON, et al.,
14 Defendants.
15

Case No. 1:12-cv-02083-LJO-MJS (PC)

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS TO DENY
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

(ECF No. 88)

CASE TO REMAIN OPEN

16 Plaintiff is a state prisoner proceeding pro se in this civil rights action brought
17 pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate
18 Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302 of the United States
19 District Court for the Eastern District of California.

20 On March 17, 2015, the Magistrate Judge issued findings and recommendations
21 to deny Defendants' motion for summary judgment and to require an evidentiary hearing
22 to resolve factual disputes concerning exhaustion. (ECF No. 88.) Defendants filed no
23 objections. Plaintiff objects to the recommendation that an evidentiary hearing be held.
24 (ECF No. 89.) Defendants filed no reply.

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

1 proper analysis. Defendants are entitled to have disputed factual questions relating to
2 exhaustion resolved through a preliminary proceeding. Albino v. Baca, 747 F.3d 1162,
3 1169-71 (9th Cir. 2014). Plaintiff's objections do not raise an issue of fact or law under
4 the findings and recommendations.

5 Accordingly, it is HEREBY ORDERED that:

- 6 1. The Court adopts the findings and recommendations, filed on March 17,
7 2015 (ECF No. 88), in full;
- 8 2. Defendants' motion for summary judgment (ECF No. 70), filed July 3,
9 2014, is DENIED;
- 10 3. The Court REFERS the matter back to the Magistrate Judge for further
11 proceedings on the exhaustion issue; and
- 12 4. The case shall remain open for resolution of the exhaustion issue and, if
13 necessary, further proceedings on Plaintiff's claims.

14 IT IS SO ORDERED.

15 Dated: April 13, 2015

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE

16 5.
17
18
19
20
21
22
23
24
25
26
27
28