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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMAR HEARNS,  
Plaintiff,  
v.  
R.GONZALES, et al.,  
Defendants.

No. 1:14-cv-01177-DAD-MJS (PC)  
ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS AND DENYING  
DEFENDANTS' MOTION FOR SUMMARY  
JUDGMENT  
(Doc. No. 49)  
ORDER DENYING PLAINTIFF'S MOTION  
TO VACATE EVIDENTIARY HEARING  
(Doc. No. 61)  
CASE TO REMAIN OPEN

Plaintiff is a state prisoner proceeding pro se in this civil rights action brought 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 302 of the United State District Court for the Eastern District of California.

On November 8, 2016, the assigned magistrate judge issued findings and recommendations recommending that defendants' motion for summary judgment be denied and that an evidentiary hearing be conducted before the magistrate judge in order to resolve the factual disputes concerning the question of whether plaintiff exhausted his administrative

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1 remedies prior to filing suit as required. (Doc. No. 49.) Defendants filed no objections to the  
2 findings and recommendations and the time for doing so has passed.

3 Plaintiff, rather than file objections to the findings and recommendations, filed a motion to  
4 vacate the Magistrate Judge's "order" for an evidentiary hearing. (Doc. No. 61.) Therein,  
5 plaintiff describes an administrative appeals process that he believes renders it virtually  
6 impossible for an inmate to prove that his administrative remedies were effectively unavailable.  
7 He argues that rather than set an evidentiary hearing, the court should grant plaintiff leave to file a  
8 fourth amended complaint, which plaintiff believes will "cure all defects." Defendants have filed  
9 no response to plaintiff's motion. Moreover, the court has recently adopted the magistrate  
10 judge's findings and recommendations and denied plaintiff's motion seeking leave to file a  
11 supplemental complaint. (Doc. No. 50, 66.)

12 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a  
13 de novo review of this case. Having carefully reviewed the entire file, the court finds the findings  
14 and recommendations to be supported by the record and by proper analysis. Defendants are  
15 entitled to have disputed factual questions relating to exhaustion resolved through a preliminary  
16 proceeding. *Albino v. Baca*, 747 F.3d 1162, 1169–71 (9th Cir. 2014). Plaintiff's motion,  
17 construed as objections to the pending findings and recommendations, merely raises issues of fact  
18 that are appropriately addressed at that evidentiary hearing.

19 Accordingly, it is HEREBY ORDERED that:

- 20 1. Plaintiff's motion to vacate (Doc. No. 61) is DENIED;
- 21 2. The court adopts the findings and recommendations, filed November 8, 2016  
22 (Doc. No. 49), in full;
- 23 3. Defendants' motion for summary judgment (Doc. No. 38), filed April 13, 2016 is  
24 DENIED
- 25 4. The court REFERS the matter back to the Magistrate Judge for further proceedings  
26 on the exhaustion issue; and

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5. The case shall remain open for resolution of the exhaustion issue and, if necessary,  
further proceedings on plaintiff's claims.

IT IS SO ORDERED.

Dated: March 9, 2017

*Dale A. Floyd*  
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UNITED STATES DISTRICT JUDGE