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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LANCE WILLIAMS,  
                                Plaintiff,  
  
          v.  
  
SALVATORE,  
                                Defendants.

No. 1:14-cv-01714-DAD-MJS

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS IN FULL AND  
REFERRING BACK TO MAGISTRATE  
JUDGE FOR EVIDENTIARY HEARING

(Doc. Nos. 43, 55)

Plaintiff is a state prisoner proceeding *in forma pauperis*<sup>1</sup> 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.

On December 21, 2016, the assigned magistrate judge issued findings and recommendations recommending defendants’ motion for summary judgment on the ground that plaintiff had failed to exhaust his administrative remedies prior to filing suit be denied, and that the matter be referred back to him for an evidentiary hearing in order to resolve relevant disputed factual issues surrounding the issue of exhaustion. (Doc. No. 55.) These findings and recommendations were served on all parties and contained notice that any objections were to be filed within fourteen days, and any replies to such objections were to be filed within fourteen days

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<sup>1</sup> Plaintiff was previously proceeding *pro se* as well, but is currently represented by counsel. (Doc. No. 64.)

1 thereafter. Plaintiff initially sought an extension of time to file objections to the findings and  
2 recommendations, which was granted. (Doc. Nos. 57, 58.) On February 2, 2017, however,  
3 plaintiff notified the court he would not be filing objections to the findings and recommendations.  
4 (Doc. No. 61.) Defendants filed no objections and the time in which to do so has passed.

5 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the undersigned has  
6 conducted a *de novo* review of this case. Having carefully reviewed the entire case, the  
7 undersigned concludes the findings and recommendations are supported by the record and by  
8 proper analysis. Defendants are entitled to have disputed factual questions relating to exhaustion  
9 resolved through a preliminary proceeding. *Albino v. Baca*, 747 F.3d 1162, 1169–71 (9th Cir.  
10 2014). Therefore, the case will be referred back to the assigned magistrate judge for an  
11 evidentiary hearing and further proceedings as deemed necessary and appropriate.

12 For these reasons:

13 1. The undersigned adopts the findings and recommendations filed on December 21, 2016  
14 (Doc. No. 55) in full;

15 2. Defendants' motion for summary judgment (Doc. No. 43), filed July 11, 2016, is  
16 denied; and

17 3. The undersigned refers the matter back to the magistrate judge for an evidentiary  
18 hearing on the issue of exhaustion and further proceedings as deemed necessary and appropriate.

19 IT IS SO ORDERED.

20 Dated: March 16, 2017

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23 UNITED STATES DISTRICT JUDGE  
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