

1 exhaust administrative remedies. (ECF No. 19.)

2 On April 11, 2018, Magistrate Judge Michael J. Seng issued findings and
3 recommendations to deny defendants' motion for summary judgment on the ground that there
4 existed a dispute of material fact as to whether the administrative remedies were effectively
5 unavailable to plaintiff. (ECF No. 45.) In the order, Judge Seng noted that the defendants were
6 entitled to seek an evidentiary hearing in their objections to his order. (*Id.* at 13) Then, the case
7 was reassigned to the undersigned due to the retirement of Judge Seng. (ECF No. 48.)

8 Following reassignment, defendants filed objections to the findings and recommendations
9 requesting, in part, an evidentiary hearing on the question of whether remedies were unavailable
10 to plaintiff. (ECF No. 49.) On review, the undersigned vacated the findings and recommendations
11 and set this matter for an evidentiary hearing for June 25, 2018. (ECF No. 51.)

12 **II. Discussion**

13 Plaintiff moves to vacate the evidentiary hearing and deny defendants' summary judgment
14 on two grounds. First, he argues that the hearing is moot because any attempt by him to exhaust
15 administrative remedies would have been moot in light of prison policy to not award damages.
16 Second, he argues that the undersigned did not have jurisdiction to vacate the previously-assigned
17 magistrate judge's findings and recommendations.

18 Turning first to plaintiff's mootness argument, plaintiff relies on several cases to argue
19 that any failure on his part to exhaust administrative remedies must be excused because the
20 pursuit of those remedies would have been futile since he was requesting only money damages.
21 This argument is clearly foreclosed, however, by Booth v. Churner, 532 U.S. 731, 734 (2001),
22 which specifically answered in the affirmative "whether an inmate seeking only money damages
23 must complete a prison administrative process that could provide some sort of relief on the
24 complaint stated." In other words, the Prison Litigation Reform Act "mandated exhaustion clearly
25 enough, regardless of the relief offered through administrative procedures." *Id.* at 741. The cases
26 cited to by plaintiff do not alter this conclusion because they either pre-date Booth or they are
27 habeas corpus cases, which are not subject to the Prison Litigation Reform Act's exhaustion
28 requirement. See Washington v. Los Angeles Cnty Sheriff's Dep't, 833 F.3d 1048, 1057 (9th Cir.

1 Aug. 12, 2016).

2 Next, plaintiff argues that the undersigned lacked jurisdiction to vacate Judge Seng’s
3 findings and recommendations, apparently on the ground that the referral order directed the
4 undersigned to conduct “all *further* proceedings” (emphasis added), implying that this court may
5 not modify any orders issued *before* the reassignment. Plaintiff cites to no legal authority for this
6 position, namely, that a newly-assigned judge may not modify orders issued before the
7 assignment. Additionally, the doctrine of stare decisis that he references in passing is
8 inapplicable. That doctrine provides that “[i]f a court must decide an issue governed by a prior
9 opinion that constitutes binding authority, the later court is bound to reach the same result, even if
10 it considers the rule unwise or incorrect. Binding authority must be followed unless and until
11 overruled by a body competent to do so.” Hart v. Massanari, 266 F.3d 1155, 1170 (9th Cir. 2001).
12 The previously-issued findings and recommendations in this case do not constitute “binding
13 authority.”

14 To the extent plaintiff intended to reference the law of the case doctrine, that doctrine
15 provides that a court should not revisit its own decisions unless extraordinary circumstances show
16 that its prior decision was wrong. Christianson v. Colt Indus. Operating Corp., 486 U.S. 800, 816
17 (1988). Here, Judge Seng specifically advised the defendants that they may file a request for an
18 evidentiary hearing if they disagreed with the findings and recommendations. (See ECF No. 45 at
19 13.) There was, therefore, no modification of any law of the case so much as a response to Judge
20 Seng’s directive to the defendants. See also Albino v. Baca, 747 F.3d 1162, 1170 (9th Cir. 2014
21 (en banc) (disputes of material fact on a motion for summary judgment for failure to exhaust
22 administrative remedies should be decided at an evidentiary hearing).

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III. Conclusion

Based on the foregoing, the Court **ORDERS:**

1. Plaintiff's motion to cancel evidentiary hearing and dismiss defendants' motion for summary judgment (ECF No. 60) is **DENIED**.

IT IS SO ORDERED.

Dated: June 11, 2018

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE