

1 The court notes, however, that on April 20, 2021, plaintiff mailed a document titled
2 “Opposition to defendant Smith’s Response to Court Order” to the court for filing, but that
3 document was not received by the Clerk of the Court for filing on the docket until April 26,
4 2021—a few days after the pending findings and recommendations were issued. (Doc. No. 64.)
5 Nevertheless, the court has considered plaintiff’s filing. In that opposition, plaintiff merely
6 restates the arguments that he presented in his opposition to defendants’ motion for summary
7 judgment as to plaintiff’s claim against defendant Smith. Those arguments were already
8 appropriately addressed in the pending findings and recommendations.

9 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
10 *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the
11 findings and recommendations are supported by the record and proper analysis.

12 Accordingly,

- 13 1. The findings and recommendations issued on April 23, 2021 (Doc. No. 63) are
14 adopted in full;
- 15 2. Defendants’ motion for summary judgment based upon plaintiff’s failure to
16 exhaust his administrative remedies prior to filing suit as required with respect to
17 plaintiff’s claim against defendant Smith in this action (Doc. No. 50) is granted;
- 18 3. Plaintiff’s claim against defendant Smith is dismissed without prejudice;
- 19 4. The Clerk of the Court is directed to terminate defendant Smith as a defendant in
20 this action; and
- 21 5. This matter is referred back to the assigned magistrate judge for further
22 proceedings.

23 IT IS SO ORDERED.

24 Dated: June 4, 2021

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27 UNITED STATES DISTRICT JUDGE
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