

1 January 25, 2019, against Defendants’ evidence that he did not submit a grievance....” (*Id.* at 10-
2 11.) Therefore, the magistrate judge found “summary judgment was not appropriate on the issue
3 of exhaustion.” (*Id.* at 11.) The magistrate judge found the Court should conduct an “evidentiary
4 hearing to determine whether Plaintiff exhausted administrative remedies relative to his claim in
5 this action,” and recommended the motion for summary judgment be denied. (*Id.* at 12.)

6 The Court served the Findings and Recommendations on all parties and notified them that
7 any objections were due within 21 days of the date of service. (Doc. 61 at 12.) The Court also
8 advised the parties that “failure to file objections within the specified time may result in the
9 waiver of rights on appeal.” (*Id.*, citing *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir.
10 2014), *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991).) No objections were filed and the
11 time to do so has passed.

12 According to 28 U.S.C. § 636(b)(1), this Court performed a *de novo* review of this case.
13 Having carefully reviewed the matter, the Court concludes the Findings and Recommendations
14 are supported by the record and proper analysis. Thus, the Court **ORDERS**:

- 15 1. The Court **DECLINES** to consider the Findings and Recommendations at this
16 time. The matter is referred to the magistrate judge to conduct an evidentiary
17 hearing under *Albino v. Baca*, 747 F.3d 1162, 1166 (9th Cir. 2014).
- 18 2. Ruling on Defendants’ motion for summary judgment is **DEFERRED** until the
19 evidentiary hearing is completed and supplementary or amended findings and
20 recommendations are issued.

21
22 IT IS SO ORDERED.

23 Dated: June 4, 2024


UNITED STATES DISTRICT JUDGE