

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES-GENERAL

Case No. CV 14-7755-MWF (PLA)

Date March 19, 2015

Title: Jamal Gaines v. Los Angeles County Sheriff's Department, et al.

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PRESENT: THE HONORABLE PAUL L. ABRAMS  U.S. DISTRICT JUDGE  
 MAGISTRATE JUDGE

Christianna Howard  
Deputy Clerk

N/A  
Court Reporter / Recorder

N/A  
Tape No.

ATTORNEYS PRESENT FOR PLAINTIFF:  
NONE

ATTORNEYS PRESENT FOR DEFENDANTS:  
NONE

**PROCEEDINGS: (ORDER TO SHOW CAUSE)**

The Court is in receipt of the Motion to Dismiss (“MTD”) filed on March 17, 2015, by defendants Doctor Tay S. Kim and Sergeant Yolando Palomo (“defendants”). (Dkt. No. 41). The Motion to Dismiss is based in part on defendants’ contention that petitioner has not exhausted his administrative remedies. (MTD at 3, 4-8 (citing Wyatt v. Terhune, 315 F.3d 1108 (2001))).

On April 3, 2014, Wyatt was overruled by Albino v. Baca, 747 F.3d 1162 (9th Cir. 2014), which held that summary judgment, not an unenumerated motion under Rule 12(b) of the Federal Rules of Civil Procedure, is the appropriate procedural device for determination of whether administrative remedies have been exhausted under the Prison Litigation Reform Act. Albino, 747 F.3d at 1168.

Accordingly, defendants are ordered to show cause **no later than April 3, 2015**, why the MTD should not be denied without prejudice.

cc: Jamal Gaines, pro se  
Grayr Berberyan, Esq.

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