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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

HORACE MANN WILLIAMS,
Plaintiff,
v.
MARISOL, et al.,
Defendants.

Case No. 1:12-cv-00730 LJO DLB PC
ORDER REGARDING DEFENDANTS’
REQUEST FOR FURTHER BRIEFING
SCHEDULE REGARDING EXHAUSTION
SUMMARY JUDGMENT MOTION
[ECF No. 83]
ORDER MODIFYING DISCOVERY AND
SCHEDULING ORDER
[ECF No. 80]

I. Procedural History

Plaintiff Horace Mann Williams (“Plaintiff”), a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action on May 4, 2012. 42 U.S.C. § 1983.

On May 13, 2013, the Court screened Plaintiff’s First Amended Complaint (“FAC”) and found cognizable claims against 1) Defendants Valdivia, Agu, Lopez, and Trimble for retaliation in violation of the First Amendment; and 2) Defendants Marisol¹, Sica, Agu, Valdivia, and Lopez for failure to protect Plaintiff from serious harm in violation of the Eighth Amendment. The Court dismissed all other claims and Defendants.

On October 9, 2013, Defendants Agu, Valdivia, Sica and Trimble filed a motion to dismiss under Fed. R. Civ. P. 12(b)(6) on the grounds that the FAC fails to state a claim upon which relief may be granted, and under the unenumerated provisions of Fed. R. Civ. P. 12(b) on the ground

¹ Defendant Marisol was dismissed from the action on October 31, 2014.

1 that Plaintiff failed to exhaust administrative remedies before he filed suit. On March 26, 2014,
2 Defendant Lopez filed a motion to dismiss under the unenumerated provisions of Fed. R. Civ. P.
3 12(b) on the ground that Plaintiff failed to exhaust his available administrative remedies before he
4 filed suit.

5 On April 16, 2014, following the Ninth Circuit's decision in Albino v. Baca, 747 F.3d
6 1162 (9th Cir. 2014), the Court issued an Order converting the exhaustion portion of Defendants'
7 motions to dismiss to motions for summary judgment. On October 31, 2014, the Court denied
8 Defendants' motion to dismiss under Fed. R. Civ. P. 12(b)(6) on the ground that the FAC fails to
9 state a claim upon which relief may be granted by Defendants Agu, Valdivia, Sica, and Trimble.
10 By separate order, the Court will issue a Findings and Recommendation regarding Defendants'
11 motions for summary judgment.

12 On December 9, 2014, the Court issued a Discovery and Scheduling Order. The order set
13 deadlines for filing motions based on exhaustion, and overlooked Defendants' outstanding
14 motions for summary judgment. Insofar as motions based on exhaustion have already been filed
15 and will be addressed by separate order, the Court hereby MODIFIES the Discovery and
16 Scheduling Order to delete the deadlines set with respect to the issue of exhaustion.

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18 IT IS SO ORDERED.

19 Dated: February 11, 2015

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE

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