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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

DARNELL DUKES,  
  
                    Plaintiff,  
  
          v.  
  
GARCIA,  
  
                    Defendant.

Case No. 1:12-cv-00941 LJO DLB PC  
  
ORDER VACATING JUDGMENT  
(Document 39)  
  
ORDER REQUIRING DEFENDANT TO FILE  
A RESPONSE TO COMPLAINT

Plaintiff Darnell Dukes (“Plaintiff”) is a California state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

On August 19, 2014, the Ninth Circuit Court of Appeals remanded the action to this Court with instructions to vacate the judgment. Citing Albino v. Baca, 747 F.3d 1162 (9th Cir. 2014), the Ninth Circuit stated that an unenumerated Rule 12(b) motion is no longer the proper procedural device for raising the issue of exhaustion.

Accordingly, the judgment is VACATED.

The Court further ORDERS Defendant to file a response to the complaint within thirty (30) days of the date of service of this order.

IT IS SO ORDERED.

Dated: September 12, 2014

/s/ Dennis L. Beck  
UNITED STATES MAGISTRATE JUDGE