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

DAVID L. STRATMON, JR.,) Case No.: 1:12-cv-01837-DAD-SAB (PC)
)
Plaintiff,)
)
v.) ORDER REGARDING NOTICE OF
) EXHAUSTION OF ADMINISTRATIVE REMEDY
)
ANGELA MORRIS,) [ECF No. 61]
)
Defendant.)
)
)
)
)

Plaintiff David L. Stratmon, Jr. is a federal prisoner proceeding pro se in this civil rights action pursuant to Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971). This matter proceeds on Plaintiff’s claim that Defendant Morris interfered with his receipt of incoming mail and failed to notify him that his mail was being withheld. This matter was referred to the undersigned pursuant to 28 U.S.C. § 636(1)(B) and Local Rule 302.

On April 24, 2017, Plaintiff filed a “motion exhaustion of administrative remedy,” dated April 16, 2017. (ECF No. 61.) Plaintiff asserts in the motion that, per policy and procedure, he exhausted his administrative remedy regarding his claim against Defendant Morris in this case. The Court construes Plaintiff’s motion as a notice of exhaustion of administrative remedies.

When exhaustion of administrative remedies is not jurisdictional, it is an affirmative defense that a defendant has the burden of raising and proving. Jones v. Bock, 549 U.S. 199, 216 (2007). On May 18, 2015, Defendant filed a motion for partial summary judgment pursuant to Federal Rule of Civil Procedure 56, based on Plaintiff’s alleged failure to properly exhaust his administrative remedies prior to filing suit. (ECF No. 26.) Plaintiff’s exhaustion of the available administrative remedies with

1 respect to the claims this matter proceeds upon were addressed in that motion. (See ECF No. 46, pp. 8-
2 9.) On January 4, 2017, the District Judge granted Defendant's motion in part, and referred this matter
3 to the undersigned for further proceedings on the above-described claim. Thus, the issue of whether
4 Plaintiff has exhausted administrative remedies for the claim that this matter proceeds upon has been
5 resolved.

6 Accordingly, no further action need be taken regarding Plaintiff's notice.

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8 IT IS SO ORDERED.

9 Dated: April 26, 2017



10 UNITED STATES MAGISTRATE JUDGE

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