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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ABEL P. REYES,
Plaintiff,
v.
FLORES, et al.,
Defendants.

Case No. 1:16-cv-00586-DAD-JLT (PC)
ORDER ON PLAINTIFF’S MOTION
CHALLENGING EXHAUSTION OF REMEDIES
(Doc. 21)

Plaintiff filed a motion seeking to prove he exhausted administrative remedies, in compliance with 42 U.S.C. § 1997e(a), prior to initiating this action. (Doc. 21.) However, the failure to exhaust is an affirmative defense which Defendant bears the burden of raising and proving on summary judgment. *Jones v. Bock*, 549 U.S. 199, 216 (2007); *Albino v. Baca*, 747 F.3d 1162, 1166 (9th Cir. 2014) (en banc), *cert. denied*, 135 S.Ct. 403 (2014). Defendant has not moved for summary judgment on exhaustion issues and the deadline to do so lapsed on August 22, 2017. (Doc. 20.) Plaintiff need not prove his exhaustion efforts until called into question by Defendants.

Accordingly, the Court **ORDERS** that Plaintiff’s motion to prove exhaustion of administrative remedies in compliance with 42 U.S.C. § 1997e(a), (Doc. 21), is

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DISREGARDED.¹

IT IS SO ORDERED.

Dated: September 2, 2017

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

¹ The Court does not determine the sufficiency of Plaintiff's exhaustion efforts or the availability of administrative remedies at this time.