UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

EARNEST CASSELL WOODS, II,

Plaintiff,

v.

TOM L. CAREY, Warden, et al.,

Defendants.

No. 2:04-cv-1225 LKK AC P

ORDER

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this action filed pursuant to 42 U.S.C. § 1983. Defendants Carey and Cervantes have moved to stay this case pending en banc review of Albino v. Baca, 697 F.3d 1023 (9th Cir. 2012), rehearing en banc granted by 709 F.3d 994 (9th Cir. 2013). Albino concerns the standard of review for the affirmative defense of failure to exhaust administrative remedies as well as the burden shifting framework involved in resolving an exhaustion question. ECF No. 292, at 2. Defendants have recently moved for summary judgment on grounds including plaintiff's alleged failure to exhaust his administrative remedies prior to filing the instant action. ECF No. 293.

The motion for summary judgment was just filed, and plaintiff has yet to file his opposition. It may or may not be necessary for this court to decide the exhaustion issue, and the disposition of Albino may or may not materially affect that analysis. In light of these variables and the age of this case, the undersigned finds that further delay is not warranted. Good cause for

a stay has not been demonstrated.

In accordance with the above, IT IS HEREBY ORDERED THAT defendants' motion to stay (ECF No. 292) is DENIED.

DATED: November 14, 2013

ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE