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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

TIMOTHY WATTS,  
Plaintiff,  
v.  
TIM V. VIRGA, et al.,  
Defendants.

No. 2:10-cv-2688 TLN CKD P

ORDER

Pursuant to Albino v. Baca, \_\_\_ F.3d \_\_\_, 2014 WL 1317141 (9th Cir. April 3, 2014), the court will dismiss defendants' pending motion to dismiss pursuant to Rule 12(b) for failure to exhaust administrative remedies, without prejudice to refile as a motion for summary judgment on the issue of failure to exhaust administrative remedies.

Accordingly, IT IS HEREBY ORDERED THAT:

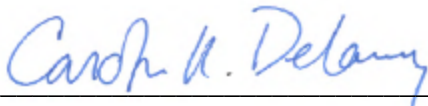
1. Defendants' motion to dismiss (ECF No. 45) is dismissed without prejudice to renewal as a motion for summary judgment pursuant to Albino; and

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2. Defendants shall file any forthcoming summary judgment motion on the issue of non-exhaustion within thirty days from the date of this order, or show good cause why they are unable to do so within that timeframe.

Dated: April 11, 2014

  
\_\_\_\_\_  
CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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