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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LEO B. TURNER, Jr.,  
Plaintiff,  
v.  
R. COLON, et al.,  
Defendants.

No. 2:11-cv-2343 KJM AC P

ORDER

On February 28, 2014, this court granted defendants’ motion to dismiss the second amended complaint under Federal Rule of Civil Procedure 12(b) for failure to exhaust administrative remedies, and entered judgment, after which plaintiff appealed. On April 3, 2014, the Ninth Circuit overruled Wyatt v. Terhune, 315 F.3d 1108, 1119 (9th Cir. 2003), with respect to the appropriate procedural device for raising the issue of administrative exhaustion. See Albino v. Baca, 747 F.3d 1162 (9th Cir. 2014) (en banc). By order filed on June 9, 2014, the Ninth Circuit vacated the judgment and remanded the instant case to this court “in light of the intervening authority of Albino v. Baca,” in an order stating that Albino had “held that the appropriate method to determine PLRA exhaustion is a motion for summary judgment, not an unenumerated Rule 12(b) motion.” ECF No. 113.


Therefore, this matter once again proceeds on plaintiff’s second amended complaint.

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Accordingly, IT IS ORDERED that defendants file their response to the second amended complaint within thirty days.

DATED: July 1, 2014

  
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ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE