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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CURTIS NUNEZ, JR.,
Plaintiff,
v.
K.M. PORTER, et al.,
Defendants.

No. 2:12-cv-2775 JAM KJN P

ORDER

On April 18, 2014, this court withdrew its Amended Findings and Recommendations filed March 26, 2014 (ECF No. 36), and dismissed defendants’ related motion to dismiss (ECF No. 20), without prejudice to defendants filing a motion for summary judgment for failure to exhaust administrative remedies, as procedurally required under Albino v. Baca, ___ F.3d ___, 2014 WL 1317141 (9th Cir. Apr. 3, 2014) (en banc). On May 19, 2014, defendants filed a motion for summary judgment for failure to exhaust administrative remedies (ECF No. 40); the briefing on that motion is now in progress.

Also on May 19, 2014, defendants filed a request for clarification, to ascertain whether the court’s withdrawal of its Amended Findings and Recommendations vacated only the portion addressing exhaustion of administrative remedies, or whether defendants should “re-file their Rule 12(b)(6) motion” for alleged failure to state a claim. (ECF No. 41 at 2.)


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1 Defendants are informed that no portion of the court's Amended Findings and
2 Recommendations remains in effect. The court's analysis of defendants' motion to dismiss for
3 failure to state a claim argument was, in part, structured by its findings concerning plaintiff's
4 alleged failure to exhaust administrative remedies. (See e.g., ECF No. 36 at 13 ("Due to the
5 recommended dismissal of plaintiff's First Amendment claims against defendants Caraballo, Till
6 and Norton [for failure to exhaust], the court need not reach defendants' motion to dismiss
7 plaintiff's First Amendment claim against Caraballo for failure to state a claim.")) Rather than
8 parse the analysis of plaintiff's First and Fourteenth Amendment claims among various findings
9 and recommendations and district judge orders, the court will address these matters anew
10 pursuant to newly-filed motions.

11 Accordingly, defendants and plaintiff are informed that the court's Amended Findings and
12 Recommendations filed March 26, 2014 (ECF No. 36), is vacated in its entirety.

13 Dated: May 22, 2014

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE