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8	UNITED STATES DISTRICT COURT		
9	FOR THE EASTERN DISTRICT OF CALIFORNIA		
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11	ANDRES WILLIAMS,	No. 2:12-cv-2894 KJM KJN P	
12	Plaintiff,		
13	V.	ORDER	
14	FREEZE, et al.,		
15	Defendants.		
16			
17	The Ninth Circuit Court of Appeals, in Albino v. Baca, F.3d, 2014 WL 1344468		
18	(9th Cir. Apr. 7, 2014) (en banc), recently held that a motion for summary judgment pursuant to		
19	Rule 56, Federal Rules of Civil Procedure, not an "unenumerated 12(b) motion" to dismiss, is the		
20	appropriate vehicle for challenging a prisoner's claims based on an alleged failure to exhaust		
21	administrative remedies.		
22	Accordingly, IT IS HEREBY ORDERED that:		
23	1. Defendant Dernoncourt's motion to dismiss for failure to exhaust administrative		
24	remedies, currently pending in this action (ECF No. 19), is denied without prejudice.		
25	2. Defendant may file and serve, within thirty (30) days after the filing date of this order,		
26	a motion for summary judgment that includes notice to plaintiff of the evidentiary requirements		
27	for opposing the motion. See Woods v. Carey, 684 F.3d 934 (9th Cir. 2012); Rand v. Rowland,		
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1	154 F.3d 952, 957 (9th Cir. 1998). Such motion shall be briefed in accordance with Local Rule	
2	230(1).	
3	Dated: April 16, 2014	
4	Fordall P. Newman	
5	/will2894.Albino. KENDALL J. NEWMAN UNITED STATES MAGISTRATE JUDGE	
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