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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GEORGE K. COLBERT,
Plaintiff,
v.
D. LEININGER, et al.,
Defendants.

No. 2:13-cv-0382 KJM KJN P

ORDER

The Ninth Circuit Court of Appeals, in Albino v. Baca, ___ F.3d ___, 2014 WL 1344468 (9th Cir. Apr. 7, 2014) (en banc), recently held that a motion for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, not an “unenumerated 12(b) motion” to dismiss, is the appropriate vehicle for challenging a prisoner’s claims based on an alleged failure to exhaust administrative remedies.

Accordingly, IT IS HEREBY ORDERED that:

1. Defendant Leininger’s motion to dismiss for failure to exhaust administrative remedies, currently pending in this action (ECF No. 23), is denied without prejudice.
2. Defendant may file and serve, within thirty (30) days after the filing date of this order, a motion for summary judgment that includes notice to plaintiff of the evidentiary requirements 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 SO ORDERED.

4 Dated: April 16, 2014

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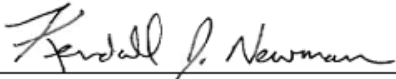
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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE