



1 complied with the requirements of Rule 56, the court will vacate the motion and direct the  
2 defendant to file within fourteen (14) days a motion that complies with Albino. The portion of  
3 defendant's motion that asserts failure to state a claim, and does not involve administrative  
4 exhaustion, may be refiled as a separate motion or in combination with a motion for summary  
5 judgment pursuant to Rule 56 regarding plaintiff's alleged failure to exhaust.

6 Accordingly, IT IS ORDERED that:

- 7 1. Defendant's motion to dismiss (ECF No. 18) is vacated;
- 8 2. Defendant may, within fourteen days, bring a motion for summary judgment pursuant  
9 to Fed. R. Civ. P. 56 on the issue of administrative exhaustion. In doing so, defendant must  
10 provide plaintiff with the notice required under Rand v. Rowland, 154 F.3d 952, 957 (9th Cir.  
11 1998) (en banc);
- 12 3. Defendant may, within fourteen days, re-file that portion of the vacated motion brought  
13 pursuant to Rule 12(b)(6) in a separate motion or in combination with any motion for summary  
14 judgment regarding the exhaustion of administrative remedies.

15 DATED: April 10, 2014

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17 ALLISON CLAIRE  
18 UNITED STATES MAGISTRATE JUDGE  
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