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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHAUNCEY REENE SIMPSON,
Plaintiff,
v.
K. SATHER, et al.,
Defendants.

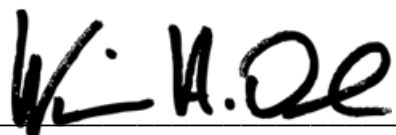
Case No. [12-cv-01024-WHO](#) (PR)

**ORDER DENYING MOTION TO
DISMISS**

Defendants' motion to dismiss this federal civil rights action on grounds that plaintiff Simpson failed to exhaust his administrative remedies (Docket No. 28) is DENIED without prejudice. Defendants are directed to renew their arguments in support of dismissal by way of a motion for summary judgment in light of the Ninth Circuit's recent ruling in *Albino v. Baca*, No. 10-55702, slip op. at 4 (9th Cir. Apr. 3, 2014) (en banc). The summary judgment motion need raise only the issue of nonexhaustion, or other procedural concerns. If the motion is denied, defendants can thereafter file a motion for summary judgment addressing the merits of Simpson's claims. The Clerk shall terminate Docket No. 28.

IT IS SO ORDERED.

Dated: April 9, 2014


WILLIAM H. ORRICK
United States District Judge