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**IAFRATE & ASSOCIATES**  
649 North Second Avenue  
Phoenix, Arizona 85003  
(602) 234-9775

Michele M. Iafrate, #015115  
[miafrate@iafratelaw.com](mailto:miafrate@iafratelaw.com)

Attorneys for **Defendant Sheriff Chris Vasquez**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

|                             |   |                                   |
|-----------------------------|---|-----------------------------------|
| Albert Ramon Ibarra Tejada, | ) | NO. CV-07-712-PHX-NVW (MEA)       |
|                             | ) |                                   |
| Plaintiff,                  | ) |                                   |
|                             | ) |                                   |
| vs.                         | ) | <b>DEFENDANT VASQUEZ’S REPLY</b>  |
|                             | ) | <b>TO PLAINTIFF’S RESPONSE TO</b> |
| Sheriff Chris Vasquez,      | ) | <b>DEFENDANT’S MOTION TO</b>      |
|                             | ) | <b>DISMISS</b>                    |
| Defendant.                  | ) |                                   |
|                             | ) |                                   |

Defendant Sheriff Chris Vasquez, through his counsel undersigned, files this Reply in support of his Motion to Dismiss. Plaintiff’s claim against Defendant Vasquez should be dismissed because Plaintiff failed to exhaust administrative remedies as required under the Prison Litigation Reform Act (PLRA), 42 U.S.C. §1997e(a). This Reply is supported by the following Memorandum of Points and Authorities.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. PLAINTIFF ADMITS HE FAILED TO EXHAUST ADMINISTRATIVE**  
3 **REMEDIES AND FAILED TO PROVIDE EVIDENCE OF UNAVAILABILITY**  
4 **OF ADMINISTRATIVE REMEDIES**

5 Plaintiff failed to exhaust the administrative remedies available to him prior to  
6 filing his law suit. An inmate must first exhaust administrative remedies *before*  
7 bringing suit. *Vaden v. Summerhill*, 449 F.3d 1047, 1050 (9th Cir. 2006). Plaintiff  
8 cannot circumvent this requirement by unsupported statements that he was unable  
9 to do so. *Vaden v. Summerhill*, 449 F.3d 1047, 1050 (9<sup>th</sup> Cir. 2006).

10 Here, Plaintiff wrote a letter to the judge alleging that because the jail was so  
11 corrupt he could not file grievances. (Doc. #8)\* He stated that the grievance system  
12 recently started. (Doc. #8). However, Plaintiff's allegation is belied by his grievance  
13 history. Here, Plaintiff filed seven grievances that were unrelated to his Complaint.  
14 (See Doc. #5; Ex. 3, ¶ 12.) This shows that a grievance system existed; Plaintiff was  
15 aware of the system; and Plaintiff used the system. However, Plaintiff failed to  
16 exhaust the administrative remedies regarding the issues raised in his Complaint.

17 In his Response, Plaintiff fails to provide evidence that any officer denied him  
18 his administrative remedies or made them unavailable. General argument and  
19 speculation are insufficient to relieve Plaintiff of the statutory mandate to exhaust  
20 administrative remedies. See *Neese v. Arpaio*, 397 F.Supp.2d 1178, 1183 (D.Ariz.  
21 2005). Defendant Vasquez has shown that administrative remedies were available  
22 to Plaintiff. Plaintiff failed to produce any evidence to the contrary.  
23

24 \_\_\_\_\_  
\* Plaintiff's letter was not served or sent to Defense counsel.

1 **II. CONCLUSION**

2 Therefore, Plaintiff's Complaint should be dismissed for failure to exhaust his  
3 available administrative remedies.

4 **DATED** this 10th day of July, 2007.

5 **IAFRATE & ASSOCIATES**

6  
7 By: s/Michele M. Iafrate  
8 Michele M. Iafrate  
9 Attorneys for **Defendant Sheriff Chris**  
10 **Vasquez**

11 **ORIGINAL** of the foregoing electronically filed  
12 this 10th day of July, 2007, with:

13 Clerk of the Court  
14 United States District Court  
15 Sandra Day O'Connor U.S. Courthouse  
16 401 West Washington Street  
17 Phoenix, AZ 85003

18 **COPIES** of the foregoing mailed  
19 this 10th day of July, 2007, to:

20 Honorable Neil V. Wake  
21 UNITED STATES DISTRICT COURT  
22 Sandra Day O'Connor U.S. Courthouse  
23 401 W. Washington St., Ste. 524, SPC 52  
24 Phoenix, Arizona 85003

Honorable Mark E. Aspey  
United States Magistrate Judge  
UNITED STATES DISTRICT COURT  
123 N. San Francisco St., Ste. 200  
Flagstaff, Arizona 86001

1 Albert Ramon Ibarra Tejeda #087108  
2 Pinal County Jail  
3 PO Box 2610  
4 Florence, Arizona 85232

5 By: s/Jill Laforanara

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