1         2         3         4         5         6       IN THE UNITED STATES DISTRICT COURT         7       FOR THE EASTERN DISTRICT OF CALIFORNIA         8         9       Wilfredo Bermudez, No. CV 1-06-1247-FRZ         10       Plaintiff, ORDER         11       vs.         12       James Yates, et al., Defendants.         13       Defendants.         14			
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25 evidence beyond your complaint, including sworn declarations and other admissible	23	dismiss under Rule 12(b) of the Federal Rules of Civil Procedure will, if granted, end your	
	24	case. When deciding a motion to dismiss for failure to exhaust, the Court may consider	
26 documentary evidence. Moreover, if Defendants produce admissible evidence demonstrating	25	evidence beyond your complaint, including sworn declarations and other admissible	
	26	documentary evidence. Moreover, if Defendants produce admissible evidence demonstrating	
27	27		
<sup>1</sup> <u>Wyatt v. Terhune</u> , 315 F.3d 1108, 1120 n.14 (9th Cir. 2003).			

that you failed to exhaust available administrative remedies, your complaint will be dismissed without prejudice unless your response to Defendants' Motion includes admissible evidence sufficient to show that you exhausted all available administrative remedies or that no administrative remedies were available to you. Types of admissible evidence may include copies of your grievances, grievance responses and sworn declarations.

The declarations or other sworn testimony setting out your specific facts must be made
on personal knowledge, must set forth such facts as would be admissible as evidence, and
must affirmatively show that the affiant is competent to testify regarding the matters in the
declaration or other sworn testimony.

If the Court determines that any of the declarations or other sworn testimony are made
 in bad faith, the Court may order the party employing the bad faith to pay the other party for
 costs associated with controverting that testimony, including the other party's attorney's fees.
 If you do not submit your own evidence in opposition to the motion, the moving
 party's evidence might be taken as truth and those claims addressed in the motion will be
 DISMISSED without a trial. IF THAT OCCURS, THERE WILL BE NO TRIAL ON
 THOSE CLAIMS.

YOU SHALL FILE ANY RESPONSE TO THE MOTION TO DISMISS
WITHIN FORTY-FIVE (45) DAYS FROM THE DATE OF THIS ORDER. If you do
not respond to the motion, your failure to respond can be viewed as you agreeing to the Court
granting the Motion. See L.R. 78-230(m). IF THAT OCCURS, THOSE CLAIMS
ADDRESSED IN THE MOTION TO DISMISS WILL BE DISMISSED AND THERE
WILL BE NO TRIAL ON THOSE CLAIMS. Any reply shall be filed within twenty (20)
days from the date the response is filed.

You must timely respond to all motions. The Court may, in its discretion, treat your
failure to respond to Defendants' Motion to Dismiss as a consent to the granting of that
Motion without further notice, and judgment may be entered dismissing this action without

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1	prejudice pursuant to Rule 7.2(i) of the Local Rules of Civil Procedure. See Brydges v.	
2	Lewis, 18 F.3d 651 (9th Cir. 1994) (per curiam).	
3	DATED this 13 <sup>th</sup> day of October, 2009.	
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6	A ADD -A	
7	FRANK R. ZAPATA	
8	United States District Judge	
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