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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

Jaime L. Zepeda,	)	No. CV 1:07-0982-SMM
Plaintiff,	)	<b>ORDER</b>
vs.	)	
Harold Tate, et al.,	)	
Defendants.	)	

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Defendant O’Brien has filed a Motion to Dismiss (Doc. 16) pursuant to Rule 12(b) of the Federal Rules of Civil Procedure for failure to exhaust prison administrative remedies as required by 42 U.S.C. § 1997e(a).

**NOTICE--WARNING TO PLAINTIFF**

***THIS NOTICE IS REQUIRED TO BE GIVEN TO YOU BY THE COURT<sup>1</sup>***

Defendants’ Motion to Dismiss seeks to have your case dismissed for failure to exhaust prison administrative remedies as required by 42 U.S.C. § 1997e(a). A motion to dismiss under Rule 12(b) of the Federal Rules of Civil Procedure will, if granted, end your case. When deciding a motion to dismiss for failure to exhaust, the Court may consider evidence beyond your complaint, including sworn declarations and other admissible documentary evidence. Moreover, if Defendants produce admissible evidence demonstrating that you failed to exhaust available administrative remedies, your complaint will be

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<sup>1</sup>Wyatt v. Terhune, 315 F.3d 1108, 1120 n.14 (9th Cir. 2003).

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

5 You must timely respond to all motions. The Court may, in its discretion, treat your  
6 failure to respond to Defendants' Motion to Dismiss as a consent to the granting of that  
7 Motion without further notice, and judgment may be entered dismissing this action without  
8 prejudice pursuant to Rule 230(1) of the Local Rules of Civil Procedure. See Brydges v.  
9 Lewis, 18 F.3d 651 (9th Cir. 1994) (*per curiam*).

10 **IT IS ORDERED** that Plaintiff must file a response to Defendants' Motion to  
11 Dismiss, together with copies of grievances, sworn declarations or other admissible evidence,  
12 no later than **November 12, 2010**. The response and its supporting memorandum shall not  
13 exceed seventeen (17) pages, exclusive of attachments.

14 **IT IS FURTHER ORDERED** that Defendants may file a reply no later than  
15 **November 22, 2010**. The reply and its supporting memorandum shall not exceed eleven (11)  
16 pages, exclusive of attachments.

17 **IT IS FURTHER ORDERED** that the Motion to Dismiss will be deemed ready for  
18 decision without oral argument on the day following the date set for filing a reply unless  
19 otherwise ordered by the Court.

20 DATED this 14<sup>th</sup> day of October, 2010.

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24 Stephen M. McNamee  
25 United States District Judge  
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