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

Alfred C. Lombardelli,)
Plaintiff,)
vs.)
K. Halsey, et al.,)
Defendants.)

No. CV 08-658 TUC JMR
ORDER

Defendants have filed a Motion to Dismiss (Doc. #29) 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 COURT¹

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

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

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

6 You must comply with the Local Rules of Civil Procedure in filing your Response.
7 You must timely respond to all motions. The Court may, in its discretion, treat your
8 failure to respond to Defendants' Motion to Dismiss as a consent to the granting of that
9 Motion without further notice, and judgment may be entered dismissing this action
10 without prejudice pursuant to the Local Rules of Civil Procedure. See Brydges v. Lewis,
11 18 F.3d 651 (9th Cir. 1994) (*per curiam*).

12 Accordingly,

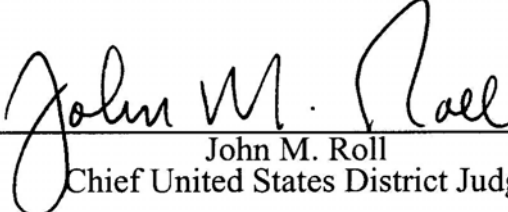
13 **IT IS ORDERED** that Plaintiff must file a response to Defendants' Motion to
14 Dismiss, together with copies of grievances, sworn declarations or other admissible
15 evidence, no later than **October 23, 2009**.

16 **IT IS FURTHER ORDERED** that Defendants may file a reply within 15 days
17 after service of Plaintiff's response.

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

21 DATED this 4th day of September, 2009.

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John M. Roll
Chief United States District Judge