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

LAWONE WILKINSON,
Plaintiff,
vs.
SERGEANT M. SLANKARD, et al.
Defendants.

No. 1:08-CV-1494-CKJ

ORDER

Defendant Sergeant M. Slankard has filed a Motion to Dismiss (Doc. #14) 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

Defendant’s 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 Defendant produces admissible evidence demonstrating that you failed to exhaust available administrative remedies, your complaint will be dismissed without prejudice unless your response to Defendant’s Motion includes admissible

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

1 evidence sufficient to show that you exhausted all available administrative remedies or that
2 no administrative remedies were available to you. Types of admissible evidence may include
3 copies of your grievances, grievance responses and sworn declarations.

4 Additionally, **the Court advises Plaintiff and Defendant that the filing deadlines**
5 **set forth in L.R. 78-230(m) are superceded as follows:** Any opposition to a dispositive
6 motion shall be filed within 30 days, plus 3 days for mailing, after the date of service of the
7 dispositive motion. Additionally, any reply shall be filed within 15 days, plus 3 days for
8 mailing, after the date of service of the opposition. The Court also advises Plaintiff and
9 Defendant that, unless otherwise permitted by the Court, a motion including its supporting
10 memorandum, and the response including its supporting memorandum, each shall not exceed
11 seventeen (17) pages, exclusive of attachments and any required statement of facts. Unless
12 otherwise permitted by the Court, a reply including its supporting memorandum shall not
13 exceed eleven (11) pages, exclusive of attachments. Attachments shall exclude materials
14 extraneous to genuine issues of material fact or law.

15 Plaintiff is advised that non-compliance or failure to file an opposition may be deemed
16 a consent to the granting of the motion and the Court may dispose of the motion summarily.
17 *See generally* L.R. 78-230(m).

18 Therefore, Plaintiff is advised that you must timely respond to all motions. You have
19 thirty-three (33) days from October 19, 2009 (the filing date of the Motion to Dismiss) to
20 respond to the Motion to Dismiss. If you do not respond to the Motion, your failure to
21 respond can be viewed as you agreeing to the Court granting the Motion. If that occurs,
22 those claims addressed in the Motion will be dismissed and there will be no trial on those
23 claims. *See Brydges v. Lewis*, 18 F.3d 651 (9th Cir. 1994) (*per curiam*).

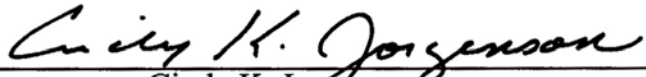
24 **IT IS ORDERED** that Plaintiff must file a response to Defendant's Motion to
25 Dismiss, together with copies of grievances, sworn declarations or other admissible evidence,
26 no later than November 23, 2009.

27 **IT IS FURTHER ORDERED** that Defendant may file a reply within 15 days after
28 service of Plaintiff's response.

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

DATED this 20th day of October, 2009.



Cindy K. Jorgenson
United States District Judge