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

John Fratus,)	No. CV-08-1500-ROS
)	
Plaintiff,)	
)	ORDER
vs.)	
)	
Sergeant Peterson, et. al.,)	
)	
Defendants.)	

Defendants have filed a Motion to Dismiss 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 complaint will be dismissed without prejudice unless your response to Defendants’ Motion includes

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

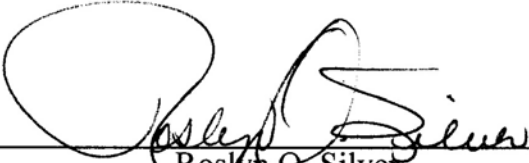
1 admissible evidence sufficient to show that you exhausted all available administrative
2 remedies or that no administrative remedies were available to you. Types of admissible
3 evidence may include copies of your grievances, grievance responses and sworn
4 declarations.

5 Plaintiff has already filed an opposition to the motion to dismiss but he will be given
6 the opportunity to file an additional opposition.

7 Accordingly,

8 **IT IS HEREBY ORDERED** that Plaintiff may file an additional response to
9 Defendants' Motion to Dismiss, together with copies of sworn declarations or other
10 admissible evidence, within fifteen days of this Order. If Plaintiff does not file an additional
11 response, the Court will rule on the motion based on the present record.

12 DATED this 17th day of February, 2010.

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16 Roslyn O. Silver
United States District Judge

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