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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JAMES COLE,

Plaintiff,

v.

MUNOZ, et al.,

Defendants.

CASE NO. 1:09-cv-00476-OWW-GBC PC

ORDER STRIKING AS PREMATURE
PLAINTIFF’S DOCUMENT REGARDING
FAILURE TO EXHAUST ADMINISTRATIVE
REMEDIES
(Doc. 21)

ORDER REQUIRING PLAINTIFF TO FILE
RESPONSE TO DEFENDANTS’ MOTION TO
DISMISS
(Doc. 22)

THIRTY-DAY DEADLINE

_____ /

Plaintiff James Cole (“Plaintiff”), a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action on March 13, 2009, pursuant to 42 U.S.C. § 1983. This action is proceeding against Defendants Munoz, Dicks, Rocha, and Blasdell for violation of the Eighth Amendment and First Amendment.

On July 26, 2010, Plaintiff filed a document entitled “Unenumerated 12(b) motion” and in it, Plaintiff presents arguments as to why his case should not be dismissed for failure to exhaust his administrative remedies. On August 9, 2010, Defendants filed a motion to dismiss. Plaintiff has failed to file an opposition or a statement of non-opposition to the motion. Local Rule 230(1).

Accordingly, it is HEREBY ORDERED that:

1. Plaintiff’s document filed on July 26, 2010 is STRICKEN as premature;
2. Plaintiff shall file an opposition or a statement of non-opposition to Defendants’

1 motion to dismiss within **thirty (30) days** from the date of service of this order; and

2 3. The failure to respond to Defendants’ motion in compliance with this order will
3 result in dismissal of this action, with prejudice, for failure to prosecute.

4 IT IS SO ORDERED.

5 **Dated:** November 30, 2010

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

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