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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

KEVIN HOLMES,) Case No.: 1:12-cv-01759 – JLT (PC)
)
Plaintiff,) RAND/WYATT WARNING TO PLAINTIFF
)
v.) (Doc. 38)
)
S. JARAMILLO, et al.)
)
Defendants.)
)

TO PLAINTIFF KEVIN HOLMES, PRO SE:

Plaintiff is advised to read the following exhaustion warning, which is adapted from the model warning in Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998) (en banc), and is modified to give Plaintiff fair and contemporaneous notice of what is required of him to oppose dismissal, as required by Wyatt v. Terhune, 315 F.3d 1108, 1120 n.14 (9th Cir. 2003). The Court provides Plaintiff this warning pursuant to the Ninth Circuit’s suggestion in Woods v. Carey, 684 F.3d 934,**17-18 n.6 (9th Cir. 2012).

Defendant has filed an unenumerated Rule 12(b) motion to dismiss the case for failure to exhaust available administrative remedies before filing suit. (Doc. 38). If the Court grants the motion, it will end your case or result in the dismissal of any unexhausted claims.

1 You have the right to present any evidence to show that you did exhaust your available administrative
2 remedies before coming to federal court. Such evidence may include: (1) declarations, which are
3 statements signed under penalty of perjury by you or others who have personal knowledge of relevant
4 matters; (2) authenticated documents—documents accompanied by a declaration showing where they
5 came from and why they are authentic, or other sworn papers such as answers to interrogatories or
6 depositions; and (3) statements in your complaint insofar as they were made under penalty of perjury
7 and they show that you have personal knowledge of the matters stated therein.

8 If you do not submit evidence in opposition to Defendant’s motion to dismiss, your case (or
9 any unexhausted claims) may be dismissed, and there will be no trial. The court is authorized to
10 resolve factual disputes against any party based on the evidence submitted by the parties.

11
12 IT IS SO ORDERED.

13 Dated: June 19, 2013

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE