

1 remedies is subject to an unenumerated Rule 12(b) motion to dismiss. *Wyatt*, 315 F.3d at 1119
2 (citing *Ritza v. Int'l Longshoremen's & Warehousemen's Union*, 837 F.2d 365, 368 (9th Cir.
3 1988) (per curiam)). In deciding a motion to dismiss for failure to exhaust, the Court will look
4 beyond the pleadings and decide disputed issues of fact. *Wyatt*, 315 F.3d at 1119-20 (quoting
5 *Ritza*, 837 F.2d at 368). If the Court concludes that Plaintiff has not exhausted the administrative
6 remedies, the unexhausted claims must be dismissed and the Court will grant the motion to
7 dismiss. *Wyatt*, 315 F.3d at 1120. If all of the claims are unexhausted, the case will be dismissed,
8 which means Plaintiff's case is over. If some of the claims are exhausted and some are
9 unexhausted, the unexhausted claims will be dismissed and the case will proceed forward only on
10 the exhausted claims. *Jones v. Bock*, 549 U.S. 199, 219-224, 127 S. Ct. 910, 923-26 (2007). A
11 dismissal for failure to exhaust is without prejudice. *Wyatt*, 315 F.3d at 1120.

12 If responding to Defendants' unenumerated 12(b) motion to dismiss for failure to exhaust
13 the administrative remedies, Plaintiff may not simply rely on allegations in the complaint.
14 Instead, Plaintiff must oppose the motion by setting forth specific facts in declaration(s) and/or by
15 submitting other evidence regarding the exhaustion of administrative remedies. *See* Fed. R. Civ.
16 P. 43(c); *Ritza*, 837 F.2d at 369. If Plaintiff does not submit his own evidence in opposition, the
17 Court may conclude that Plaintiff has not exhausted the administrative remedies and the case will
18 be dismissed in whole or in part.

19 4. Unsigned declarations will be stricken, and declarations not signed under penalty of
20 perjury have no evidentiary value.

21 5. The failure of any party to comply with this order, the Federal Rules of Civil
22 Procedure, or the Local Rules of the Eastern District of California may result in the imposition of
23 sanctions including but not limited to dismissal of the action or entry of default.

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25 IT IS SO ORDERED.

26 Dated: March 11, 2014

/s/ Jennifer L. Thurston
27 UNITED STATES MAGISTRATE JUDGE
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