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

LON CARTER,
Plaintiff,
v.
J. TILTON, et al.,
Defendants.

Case No. 2:07-cv-2230-LDG

ORDER

On July 20, 2012, defendants Stransky and Weinstein filed a Wyatt warning to plaintiff Carter regarding opposing dismissal for failure to exhaust (#25). According to recent authority, notice of what is required to oppose dismissal of the action or certain claims for failure to exhaust available administrative remedies must be provided to a pro se plaintiff “at the time when the defendants’ motions are made.” See Woods v. Carey, 684 F.3d 964, 939 (9th Cir. 2012). In their submission, defendants urge the court to require Carter to file a supplement to his opposition to the motion to dismiss to be in compliance with Woods. Carter, however, has filed an opposition to defendants’ submission in which he complains, among other things, that defendants have violated Woods’ requirement to file the notice at the time of the filing of the relevant motion. In an abundance of caution, the court will re-start the motion to dismiss process.

THE COURT HEREBY ORDERS that defendants’ motion to dismiss (#20) is DENIED without prejudice.

THE COURT FURTHER ORDERS the following:

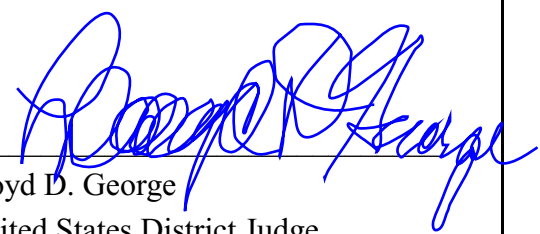
- (1) Defendants shall have thirty (30) days in which to re-file the motion to dismiss with the inclusion of the Wyatt warning.

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(2) Carter shall have thirty (30) days from the re-filing of defendants' motion in which to file an opposition to it. In lieu of filing a new brief, Carter may simply indicate that he is reinstating his previous opposition, and may supplement it, if he so chooses.

(3) Defendants shall have twenty (20) days from the filing of Carter's opposition, in which to file a reply, which may include incorporation by reference previously filed arguments or materials.

DATED this 26 day of September, 2012.



Lloyd D. George
United States District Judge