

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LYNNARD SMITH,

No. C 07-4089 JSW (PR)

Plaintiff,

**ORDER PROVIDING
PLAINTIFF NOTICE AND
WARNING; SCHEDULING
SUPPLEMENTAL BRIEFING**

v.

STEVEN G. DAVIS,

Defendants.

Plaintiff, a California prisoner pro se, filed this civil rights action under 42 U.S.C. § 1983. Defendants have filed a motion to dismiss in which they argue that Plaintiff's claims are not exhausted as required by 42 U.S.C. § 1997e. Pursuant to *Woods v. Carey*, No. 09-15548, slip op. 7871, 7884-85 (9th Cir. July 6, 2012), Plaintiff is given the following notice and warning for a second time:

If defendants file an unenumerated motion to dismiss for failure to exhaust, they are seeking to have your case dismissed. If the motion is granted it will end your case.

You have the right to present any evidence you may have which tends to show that you did exhaust your administrative remedies. Such evidence may be in the form of declarations (statements signed under penalty of perjury) or authenticated documents, that is, documents accompanied by a declaration showing where they came from and why they are authentic, or other sworn papers, such as answers to interrogatories or depositions.

If defendants file a motion to dismiss and it is granted, your case


1 **will be dismissed and there will be no trial.**

2 *See also Wyatt v. Terhune*, 315 F.3d 1108, 1120 n. 4 (9th Cir. 2003).

3 Plaintiff may supplement his opposition to Defendants' motion in light of the
4 foregoing on or before **August 1, 2012**. Defendants shall file a supplemental reply brief
5 within **7 days** of the date any supplemental opposition is filed. If Plaintiff does not
6 supplement his opposition, Defendants' motion will be decided on the papers that have
7 already been filed.

8 **IT IS SO ORDERED.**

9 DATED: July 11, 2012



JEFFREY S. WHITE
United States District Judge

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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 LYNNARD A. SMITH,
6
7 Plaintiff,

Case Number: CV07-04089 JSW

CERTIFICATE OF SERVICE


8
9 STEVEN G. DAVIS et al,
10 Defendant.

11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
12 Court, Northern District of California.

13 That on July 11, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said
14 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
15 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
16 receptacle located in the Clerk's office.

17
18 Lynnard A. Smith
19 D89280
20 QSP Solano
21 P.O. Box 4000
22 Yacaville, CA 95696

23
24 Dated: July 11, 2012

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28

Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk