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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

JAMES W. COVERT,
Plaintiff,
vs.
R. GRAHAM, et al.,
Defendants.

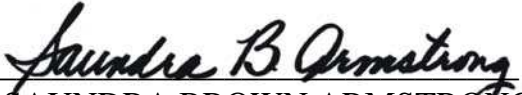
Case No: C 06-6626 SBA (pr)
ORDER FOR FURTHER BRIEFING
Docket 50

Currently pending in this prisoner civil rights case is Defendants’ unenumerated motion to dismiss for failure to exhaust administrative remedies, pursuant to Federal Rule of Civil Procedure 12(b). Dkt. 50. In its reply, Defendants rely on evidence pertaining to Grievance No. SQ-05-1563 which “was not previously available to Defendants or San Quentin staff when preparing the instant motion to dismiss[.]” Defs.’ Reply at 5:3-6, Dkt. 61. It is improper for the Court to consider new information presented in a reply without affording the opposing party an opportunity to respond. Accordingly,

IT IS HEREBY ORDERED THAT Plaintiff may file a surreply that responds directly to the new evidence proffered by Defendants. If Plaintiff elects to file a surreply, he shall do so by no later than February 20, 2013. The surreply may not exceed two pages.

IT IS SO ORDERED.

Dated: February 11, 2013


SAUNDRA BROWN ARMSTRONG
United States District Judge