

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ALFRED R. KIDD,

No. C 11-04260 EJD (PR)

Plaintiff,

ORDER PROVIDING PLAINTIFF NOTICE

vs.

B. POWELL, et al.,

Defendant.

---

The Ninth Circuit recently held that "Rand and Wyatt notices must be served concurrently with motions to dismiss and motions for summary judgment so that pro se prisoners will have fair, timely and adequate notice of what is required of them in order to oppose those motions." Woods v. Carey, Nos. 09-15548 & 09-16113, slip op. 7871, 7874 (9th Cir. July 6, 2012). Because it appears that a Wyatt notice was not served concurrently with the pending motion to dismiss for failure to exhaust in this case, the Court will provide said notice now:

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


1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

showing where they came from and why they are authentic, or other sworn papers, such as answers to interrogatories or depositions. If defendants' motion to dismiss is granted, your case will be dismissed and there will be no trial.

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

Plaintiff's opposition is currently due **no later than August 1, 2012**. Defendants shall file a reply to the opposition **within 15 days** thereafter.

DATED: 7/10/2012

  
EDWARD J. DAVILA  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

ALFRED R. KIDD,  
Plaintiff,

Case Number: CV11-04260 EJD

**CERTIFICATE OF SERVICE**

v.

B. POWELL, et al.,  
Defendants.

\_\_\_\_\_/

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

That on 7/13/2012, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Alfred R. Kidd K-55068  
Kern Valley State Prison  
P. O. Box 6000  
Delano, CA 93215-6000

Dated: 7/13/2012

Richard W. Wieking, Clerk  
/s/ By: Elizabeth Garcia, Deputy Clerk