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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DAVID B. TURNER,

Plaintiff,

vs.

SAN DIEGO CENTRAL JAIL;
DOES; SAN DIEGO SHERIFFS, et al.,

Defendants.

Civil No. 13CV1133-WQH (BGS)

**ORDER PROVIDING PLAINTIFF
NOTICE OF DEFENDANTS'
MOTION TO DISMISS
PURSUANT TO
WYATT v. TERHUNE
AND SETTING
BRIEFING SCHEDULE**

Plaintiff is a state prisoner proceeding pro se in this civil rights action filed pursuant to the Civil Rights Act, 42 U.S.C. § 1983.

Defendants have filed a Motion to Dismiss the Complaint pursuant to FED.R.CIV.P. 12(b). Defendants argue Plaintiff has failed to exhaust administrative remedies prior to suit as required by 42 U.S.C. § 1997e(a).

“In deciding a motion to dismiss for a failure to exhaust nonjudicial remedies, the court may look beyond the pleadings and decide disputed issues of fact.” *Wyatt v. Terhune*, 315 F.3d 1108, 1119-20 (9th Cir. 2003) (citing *Ritza v. Int’l Longshoremen’s & Warehousemen’s Union*, 837 F.2d 365, 369 (9th Cir. 1988) (per curiam)). If the court looks beyond the pleadings when deciding a motion to dismiss for failure to exhaust, “a procedure closely analogous to summary judgment,” the Court “must assure that [the

1 plaintiff] has fair notice of his opportunity to develop a record.” *Id.* at 1120 n.14; *see*
2 also *Marella v. Terhune*, 568 F.3d 1024, 1028 (9th Cir. 2009) (remanding case to district
3 court where court failed to “effectively give [plaintiff] fair notice that he should have
4 submitted evidence regarding exhaustion of administrative remedies”).

5 Accordingly, Plaintiff is hereby provided with notice that Defendants have asked
6 the Court to dismiss his case because he failed to exhaust administrative remedies
7 pursuant to 42 U.S.C. § 1997e(a). Plaintiff is further advised of his opportunity to
8 include in his Opposition to Defendants’ Motion whatever arguments and documentary
9 evidence he may have to show that he did, in fact, exhaust all administrative remedies
10 as were available to him prior to filing suit. *See Wyatt*, 315 F.3d at 1119-21; *Marella*,
11 568 F.3d at 1028.

12 **Conclusion and Order**

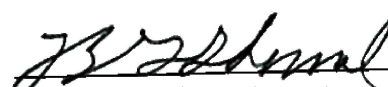
13 Accordingly, the Court sets the following briefing schedule:

- 14 1) Plaintiff, if he chooses, may file an Opposition to Defendants’ Motion to
15 Dismiss and serve it upon Defendants’ counsel of record no later than
16 **September 23, 2013**
- 17 2) Defendants may file a Reply to Plaintiff’s Opposition, and serve it upon Plaintiff
18 no later than **September 30, 2013**.

19 At that time, the Court will consider the matter fully briefed as submitted on the
20 papers and will thereafter issue a written Order. Unless otherwise ordered, no
21 appearances are required on the date set for hearing and no oral argument will be held.
22 *See S.D. Cal. CivLR 7.1.d.1.*

23 **IT IS SO ORDERED.**

24
25 DATED: September 6, 2013

26 
27 Hon. Bernard G. Skomal
28 U.S. Magistrate Judge
United States District Court