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

DARRIN GASPER,
CDCR #AB-9495,

Plaintiff,

vs.

S. SANCHEZ, et al.,

Defendants.

Civil Case No. 15cv1118 BEN (JMA)

**ORDER PROVIDING PLAINTIFF
NOTICE OF DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT RE FAILURE TO
EXHAUST ADMINISTRATIVE
REMEDIES**

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 pre-answer motion for summary judgment pursuant to Federal Rule of Civil Procedure 56 and *Albino v. Baca*, 747 F.3d 1162 (9th Cir. 2014) (en banc). In their Motion, Defendants argue that Plaintiff has failed to exhaust all available administrative remedies prior to filing this lawsuit, as required by the Prison Litigation Reform Act ("PLRA"). *See* 42 U.S.C. § 1997e(a).

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1 “The PLRA mandates that inmates exhaust all available administrative remedies
2 before filing “any suit challenging prison conditions,” including, but not limited to,
3 suits under § 1983.” *Albino*, 747 F.3d at 1171 (citing *Woodford v. Ngo*, 548 U.S. 81,
4 85 (2006)). “Exhaustion should be decided, if feasible, before reaching the merits of
5 a prisoner’s claim.” *Id.* at 1170. The Ninth Circuit has held that “the appropriate
6 procedural device for pretrial determination of whether administrative remedies have
7 been exhausted under the PLRA . . . is a motion for summary judgment under Rule 56.”
8 *Id.* at 1168.

9 Rule 56 tells you what you must do in order to oppose a Motion for Summary
10 Judgment. Generally, summary judgment must be granted when there is no genuine
11 issue of material fact and the party who asked for summary judgment is entitled to
12 judgment as a matter of law. If a defendant’s motion for summary judgment is granted,
13 this will end your case. When a party you are suing makes a motion for summary
14 judgment that is properly supported by declarations (or other sworn testimony), you
15 cannot simply rely on what your complaint says. Instead, you must set out specific
16 facts in declarations, depositions, answers to interrogatories, or authenticated
17 documents, as provided by Rule 56(e), that contradict the facts shown in the
18 defendants’ declarations and documents and show that there is a genuine issue of
19 material fact for trial.

20 Accordingly, Plaintiff is hereby provided with notice that Defendants have asked
21 the Court to find, as a matter of law, that he failed to exhaust administrative remedies
22 pursuant to 42 U.S.C. § 1997e(a). Plaintiff is further advised of his opportunity to
23 include in his Opposition to Defendants’ Motion whatever arguments and documentary
24 evidence he may have to show that he did, in fact, exhaust all administrative remedies
25 related to his claims as were available to him prior to filing suit. *See Marella v.*
26 *Terhune*, 568 F.3d 1024, 1028 (9th Cir. 2009) (a district court must “effectively give
27 [plaintiff] fair notice that he should have submitted evidence regarding exhaustion of
28 administrative remedies”).

1 The Court cautions Plaintiff that if he does not submit his own evidence in
2 opposition, summary judgment, if appropriate, may be entered against him. If summary
3 judgment is granted, his unexhausted claims will be dismissed and there will be no trial
4 on the merits as to his unexhausted claims.

5 Defendants' Motion is set for hearing on **Monday, November 9, 2015**, at 10:30
6 a.m.. Accordingly, Plaintiff must file an opposition to Defendants' Motion and serve
7 it upon Defendants' counsel of record no later than **Monday, October 26, 2015**.
8 Defendants may file a reply no later than **Monday, November 2, 2015**.

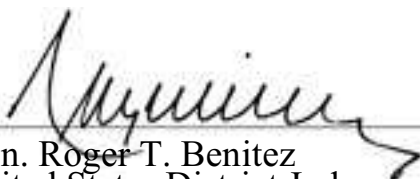
9 At the time set for hearing, the Court will consider Defendants' Motion fully
10 briefed as submitted on the papers. Unless otherwise ordered, no appearances are
11 required on the date set for hearing and no oral argument will be heard. *See* S.D. CAL.
12 CIVLR 7.1.d.1.

13 **IT IS SO ORDERED.**

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15 DATED: September 30, 2015

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Hon. Roger T. Benitez
United States District Judge

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