

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

| | | |
|--|---|---------------------------|
| DAVID LEWICKI, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | No. 1:17-cv-02564-TWP-DML |
| |) | |
| DUSHAN ZATECKY, Superintendent for the |) | |
| Pendleton Correction Facility, <i>et al.</i> , |) | |
| |) | |
| Defendants. |) | |

Entry Directing Further Proceedings

The defendants have asserted the affirmative defense that the plaintiff failed to exhaust his administrative remedies prior to filing this lawsuit. This defense must be resolved before reaching the merits of this case. *Pavey v. Conley*, 544 F.3d 739, 742 (7th Cir. 2008); *Perez v. Wis. Dep't of Corr.*, 182 F.3d 532, 536 (7th Cir. 1999) (“The statute [requiring administrative exhaustion] can function properly only if the judge resolves disputes about its application before turning to any other issue in the suit.”). Accordingly, the defendants shall have **through November 29, 2017**, in which to either 1) file a dispositive motion in support of the affirmative defense that the plaintiff failed to exhaust his administrative remedies prior to filing this lawsuit, 2) notify the Court that this affirmative defense is not amenable to resolution through a dispositive motion, or 3) notify the Court that the defendants will not pursue the affirmative defense of failure to exhaust. If a dispositive motion is filed, the plaintiff shall have **twenty-eight (28) days** in which to respond. The defendants shall then have **fourteen (14) days** in which to reply.

Except for activities associated with the development and resolution of the defendants’ affirmative defense that the plaintiff failed to exhaust his administrative remedies prior to filing

this action, or any other matter directed by the Court, any other activities or deadlines in the action are **stayed**.

IT IS SO ORDERED.

Date: 10/24/2017

A handwritten signature in black ink, reading "Tanya Walton Pratt", is positioned above a horizontal line.

TANYA WALTON PRATT, JUDGE
United States District Court
Southern District of Indiana

Electronic distribution to counsel of record via CM/ECF and to:

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