

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION

JOSHUA EMMANNUAL COMER, )  
)  
Plaintiff, )  
)  
vs. ) Case No. 4:14-cv-00064-TWP-DML  
)  
GUY GRAMAGLIA Lieutenant, )  
JERRY KINNETT Deputy Sheriff, )  
)  
Defendants. )

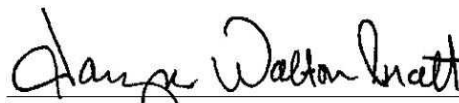
**Entry Directing Development of Affirmative Defense Regarding  
Asserted Failure to Exhaust Available Administrative Remedies**

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 September 30, 2014**, 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 defendant will not pursue the affirmative defense of failure to exhaust. If a dispositive motion is filed, the plaintiff shall have **thirty (30) days** in which to respond. The defendants shall then have **fifteen (15) days** in which to reply.

All other proceedings and deadlines are **stayed**.

**IT IS SO ORDERED.**

Date: 8/22/2014

  
Hon. Tanya Walton Pratt, Judge  
United States District Court  
Southern District of Indiana

Distribution:

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