

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

ALAN JOSUE RUIZ,)
vs.)
Plaintiff,)
vs.)
SMITH Sgt.,)
Defendant.)
No. 4:16-cv-00227-TWP-TAB

Entry Directing Development of Exhaustion Defense and Issuing Partial Stay

The Court, having considered the above action and the matters which are pending, makes the following rulings:

The defendant has 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 defendant shall have **through March 21, 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 defendant 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 defendant shall then have **fourteen (14) days** in which to reply.

Except for activities associated with the development and resolution of the defendant's 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: 2/21/2017

Distribution:

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