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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

WILLIAM ENGLAND,)	3:06-cv-0576-RAM
)	
Plaintiff,)	<u>ORDER</u>
)	
vs.)	
)	
STATE OF NEVADA, et al.,)	
)	
Defendants.)	

Defendants have filed an Unenumerated 12(b) Motion to Dismiss/Motion *in Limine* (Doc. #188) alleging that Plaintiff has failed to exhaust his administrative remedies concerning the claim remaining to be tried in this case.

Defendants should have known about this claim to failure to exhaust from the inception on this case and certainly knew about it on November 19, 2010, when counsel for Defendants filed a Notice with this court stating that “Defendants recently discovered” that Plaintiff had not exhausted administrative remedies regarding the sole remaining claim (Doc. #180). The Defendants waited nearly ninety (90) days to file this Motion on the eve of trial.

Such dilatory conduct will not be sanctioned by the court and Defendants’ Unenumerated 12(b) Motion to Dismiss/Motion *in Limine* (Doc. #188) is **DENIED** as untimely.

DATED: February 8, 2011.



UNITED STATES MAGISTRATE JUDGE

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