



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES  
ATTORNEY GENERAL

DIVISION OF STATE COUNSEL  
LITIGATION BUREAU

Writer's Direct Dial: (212) 416-8572

February 5, 2020

**Via ECF and Facsimile (914) 390-4179**

Honorable Nelson S. Román  
United States District Court Judge  
Southern District of New York  
300 Quarropas Street  
White Plains, NY 10601

Re: McGriff v. Keyser et al., No. 17 Civ. 7307 (NSR)

Dear Judge Román:

This Office represents defendants William Keyser, Anthony Polizzi, and Stephen Keyser, (collectively "Defendants") in the above-referenced matter.<sup>1</sup> Defendants write to respectfully request that the Court set a schedule for initial discovery to be limited to the narrow issue of exhaustion. Following this limited discovery, Defendants intend to move for summary judgment on the grounds that plaintiff failed to exhaust his available administrative remedies as required by 42 U.S.C. § 1997e(a) (the "PLRA").

The PLRA requires that prisoners exhaust all administrative remedies before bringing an action regarding prison conditions. *Williams v. King*, 56 F. Supp. 3d 308, 320-21 (S.D.N.Y. 2014). Section 1997e(a) requires proper exhaustion, which means complying with all procedural steps and completing the administrative review process. *Id.*; *see also, Amador v. Andrews*, 655 F.3d 89, 96 (2d Cir. 2011). The issue of exhaustion, however, is one which must be decided by the Court, *see Woodford v. Ngo*, 548 U.S. 81, 85 (2006), and which can and should be addressed before the parties engage in potentially burdensome discovery. *See Cuoco v. United States Bureau of Prisons*, No. 98 Civ. 9009, 2000 WL 347155, at \*8 (S.D.N.Y. Mar. 31, 2000) ("in the interests of judicial economy the threshold issue of exhaustion should be addressed and resolved before discovery"). The evidence is expected to show that Plaintiff only filed a grievance on the issue of finding hair in his food while in SHU, a claim that was dismissed by Order dated November 13,

<sup>1</sup> All claims against Defendant Venettozzi and certain claims against Defendants Keyser, Polizzi and Keyser were dismissed by Order dated November 13, 2019. (Dkt No. 57).

MEMO ENDORSED

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DCC#:  
FILED: 2/14/2020

