

FILED
DEC - 2 2010

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

ANTONIO ALEJANDRO GUTIERREZ,

CV. 09-6204-KI

Plaintiff,

ORDER

v.

MAX WILLIAMS, et al.,

Defendants.

KING, Judge

PRO SE PRISONER ADVICE NOTICE

The defendants have filed a motion to dismiss, pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, on the ground that you have not exhausted your administrative remedies. Defendants' motion will, if granted, end this case.

When a party you are suing makes a motion to dismiss for failure to exhaust, and that motion is properly supported by declarations (or other sworn testimony) and/or documents, you cannot simply rely on what your complaint says. Instead, you must set out specific facts in declarations, depositions, answers to

interrogatories, or documents, that contradict the facts shown in the defendant's declarations and documents and show that you have in fact exhausted your claims. If you do not submit your own evidence in opposition, and the defendant's evidence establishes that you did not exhaust your administrative remedies, the motion to dismiss will be granted, your case will be dismissed, and there will be no trial.

The court notes that on December 2, 2010, plaintiff filed his response to defendants' motion to dismiss. Because plaintiff was entitled to receive this notice before filing his response, he shall be given leave to file any additional response by December 23, 2010.

OTHER PENDING MOTIONS

Defendants' motion to stay discovery, pending resolution of their motion to dismiss (#42), is DENIED given the fact that plaintiff is seeking discovery in order to properly serve all named defendants. Plaintiff's motion to compel discovery (#38) is DENIED due to plaintiff's failure to demonstrate that he served a proper request for interrogatories upon defendants, and that defendants failed to timely respond thereto. See Fed. R. Civ. P. 33 & 37.

Plaintiff's motion for clarification (#39) is DENIED. This court previously addressed plaintiff's service questions. See Order (#37) (dated Oct. 19, 2010). Finally, plaintiff's motion for

extension of time (#46) is DENIED AS MOOT given the briefing schedule outlined below.

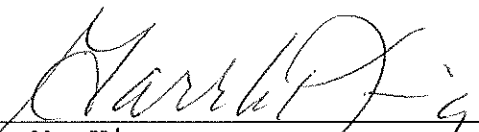
CONCLUSION

IT IS ORDERED that plaintiff may file any further response to defendants' motion to dismiss by December 23, 2010. Defendants may file a reply by January 7, 2011. Defendants' motion to dismiss (#42) shall be taken UNDER ADVISEMENT on January 10, 2011.

IT IS FURTHER ORDERED that plaintiff's motions to compel discovery (#38), for clarification (#39), and for extension of time (#46); and defendants' motion to stay discovery (#41) are DENIED.

IT IS SO ORDERED.

DATED this 3rd day of December, 2010.



Garr M. King
United States District Judge