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June 13, 2007

The Honorable Beverly B. Martin
United States District Court for the Northern District of Georgia
U.S. Courthouse
75 Spring Street SW
23rd Floor
Atlanta, GA 30303-3309

Re: *Alderman v. Donald, et al.*, 1:07 CV 0896

Dear Honorable Judge Martin:

The instant action was filed on April 25, 2007. D.I. 1. In lieu of an answer, Defendants filed *Defendant's Pre-Answer Motion to Dismiss* on May 21, 2007, alleging, *inter alia*, that Mr. Alderman had failed to exhaust his administrative remedies under 42 U.S.C. § 1997e(a) of the Prison Litigation Reform Act (PLRA). D.I. 13. Plaintiff responded on May 31, 2007. D.I. 16. Defendants filed their Reply on June 8, 2007. D.I. 18. Based on Defendants' pending motion, they have refused to provide any discovery to Mr. Alderman until the Court makes a determination on their Motion, thus further delaying this litigation.[1]

As outlined previously, the exhaustion requirement is intended to give jail and prison authorities an opportunity to address grievable issues, which they have clearly had, before they become federal lawsuits. *See Porter v. Nussle*, 534 U.S. 516, 524-25 (2002). However, while the exhaustion requirement serves legitimate purposes, it is not intended to give authorities the

[1] While Defendants have continually delayed this litigation, they have worked diligently in regard to Mr. Alderman's petition for certiorari, filing their opposition one week prior to it's due date. These actions show that the Defendants have no intention of allowing Mr. Alderman's claim to proceed prior to his execution by unconstitutional means.

opportunity to create insurmountable obstacles to lawsuits that may be essential to protect constitutional and other legal rights. *See Woodford v. Ngo*, 126 S. Ct. 2378, 2385 (2006).

It was learned by Plaintiff today, through an article in the Atlanta Journal Constitution (Exh. A), that Defendants had recently "finished reworking [their] execution procedures last week" without alerting Mr. Alderman or the Court. *See* June 13, 2007 from M. Siem to E. Snelling (Exh. B). Based on these changes, it suggests that Defendants have made a final determination on Mr. Alderman's appeal from his formal grievance, yet are withholding a response for the full 90 days they are allegedly entitled to, merely to further delay this litigation. While it continues to be Mr. Alderman's position that this issue is non-grievable, even if grievable, these actions by the Defendants show that Mr. Alderman's grievance has run its course, thereby fully exhausting any available administrative remedy under 42 U.S.C. § 1997e(a) of the PLRA. Therefore, the Defendants' final determination on his appeal from the formal grievance render *Defendant's Pre-Answer Motion to Dismiss* moot. *See Irwin v. Hawk*, 40 F.3d 347, 349 n.2 (11th Cir. 1994); *Moore v. CO2 Smith*, 18 F. Supp. 2d 1360, 1363 (N.D. Ga. 1998). Additionally, as the Defendants' actions further support a showing that they are using the exhaustion requirement to delay this litigation, this Court should deny *Defendant's Pre-Answer Motion to Dismiss*. *Woodford*, 126 S. Ct. at 2385 (2006).

Based on the foregoing, Mr. Alderman asks this Court to order discovery to begin immediately so that Mr. Alderman may obtain a determination on his Complaint prior to the Defendants execute him by unconstitutional means.

Sincerely,

Michael A. Siem

cc: William E. Hoffman Jr.
Thomas H. Dunn
Thurbert E. Baker
Eddie Snelling, Jr.