FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

JAN 30 2013
at 11 o'clock and 25 min. A M.
SUE BEITIA, CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

IN THE MATTER OF The Local Rules of Practice for the United States District Court for the District of Hawaii	ORDER REGARDING AMENDMENT OF LOCAL RULE 99.56.2 OF THE LOCAL RULES OF PRACTICE FOR THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII; EXHIBITS A-C

ORDER REGARDING AMENDMENT OF LOCAL RULE 99.56.2
OF THE LOCAL RULES OF PRACTICE FOR THE UNITED
STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII

Having published a proposed amendment for public comment and having received no comments, this court hereby orders that Local Rule 99.56.2 of the Local Rules of Practice for the United States District Court for the District of Hawaii is amended, effective February 1, 2013, as set forth below.

In relevant part, Local Rule 99.56.2 is amended as set forth in Exhibit A, and the Preapproved Notice to Pro Se Prisoners Pursuant to LR99.56.2 is amended as set forth in Exhibit B. Replacement pages for this amended rule and notice (to be inserted in a complete set of the local rules)are attached to this order as Exhibit C.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii; January 29, 2013.

/s/ Susan Oki Mollway
SUSAN OKI MOLLWAY
CHIEF UNITED STATES DISTRICT JUDGE

/s/ J. Michael Seabright
J. MICHAEL SEABRIGHT
UNITED STATES DISTRICT JUDGE

/s/ Leslie E. Kobayashi
LESLIE E. KOBAYASHI
UNITED STATES DISTRICT JUDGE

IN THE MATTER OF The Local Rules of Practice for the United States District Court for the District of Hawaii
ORDER REGARDING AMENDMENT OF LOCAL RULE 99.56.2 OF THE LOCAL RULES OF PRACTICE FOR THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII; EXHIBITS A-C

LR99.56.2. Notice Re: Motions for Summary Judgment and Motions to Dismiss for Failure to Exhaust in Pro Se Prisoner Cases.

When a motion for summary judgment or motion to dismiss for failure to exhaust administrative remedies is filed against pro se prisoner litigants, the moving party shall file a separate notice using the court's preapproved Notice or lodge for the magistrate judge's review and signature, and then file, a separate notice, which in ordinary, understandable language advises the prisoner: (a) of the contents of Fed. R. Civ. P. 56 and LR56.1; (b) that the prisoner has the right to file affidavits or other admissible evidence in opposition to the motion for summary judgment or motion to dismiss for failure to exhaust administrative remedies, and that failure to respond might result in the entry of summary judgment against the prisoner; and (c) that if the motion for summary judgment or to dismiss for failure to exhaust is granted, the prisoner's case will be terminated. The moving party shall file and serve the prisoner with the notice simultaneously with the motion. A preapproved form of the notice follows this rule.

EXHIBIT A

PREAPPROVED NOTICE TO PRO SE PRISONERS PURSUANT TO LR99.56.2
(THIS NOTICE IS REQUIRED TO BE GIVEN TO YOU)

The defendants have filed a motion for summary judgment or to dismiss for failure to exhaust, by which they seek to have your case dismissed. If defendants' motion is granted under Rules 12 or 56 of the Federal Rules of Civil Procedure it will end your case. Rule 56 tells you what you must do in order to oppose either of these motions. Generally, judgment must be granted when there is no genuine issue of material fact - that is, if there is no real dispute about any fact that would affect the result of your case, and if the party who asked for summary judgment is entitled to judgment as a matter of law, your case will end. When a party you are suing makes a motion for summary judgment or to dismiss for failure to exhaust that is properly supported by declarations (or other sworn testimony), you cannot simply rely on what your complaint says. Instead, you must set forth your specific facts in declarations, depositions, answers to interrogatories, or authenticated documents, as provided in Rule 56(e), that contradict the facts shown in the defendants' declarations and documents and show that there is a genuine issue of material fact for trial. If you do not submit your own evidence in opposition, judgment, if appropriate, may be entered against you. If such judgment is granted, your case will be dismissed and there will be no trial.

This notice is being provided to you in accordance with Rule 99.56.2, of the Local Rules of Practice for the United States District Court for the District of Hawaii ("Local Rule"). You are required to comply with Local Rule 56.1 when opposing motions for summary judgment or to dismiss for failure to exhaust. This rule sets out the local requirements for motions for summary judgment and to dismiss for failure to exhaust and for opposition to such motions. To oppose a motion, you must file a concise statement that accepts the facts set forth in the moving parties' concise statement, or sets forth all material facts as to which it is contended there exists a genuine issue necessary to be litigated. When preparing the separate concise statement, you are required to reference only the material facts that are absolutely necessary for the court to determine the limited issues presented in the motion (and no others), and each reference shall contain a citation to a particular affidavit, deposition, or other document that supports your interpretation of the material fact. Documents referenced in the concise statement may, but need not, be filed in their entirety if a party concludes that the full context would be helpful to the

court (e.g., a deposition miniscript with an index stating what pages may contain key words may often be useful). You shall extract and highlight the relevant portions of each referenced document. Photocopies of extracted pages, with appropriate identification and highlighting, will be adequate.

The concise statement shall be no longer than five (5) pages, unless it contains no more than 1500 words. When a concise statement is submitted pursuant to the foregoing word limitation, the number of words shall be computed in accordance with Local Rule 7.5(d), and the concise statement shall include the certificate provided for in Local Rule 7.5(e). When resolving motions for summary judgment, the court has no independent duty to search and consider any part of the court record not otherwise referenced in the separate concise statement. If necessary, you may request further guidance from the court regarding the requirements of Rule 56, Federal Rules of Civil Procedure, and Local Rule 56.1.

and general requests that would not normally require input from an opposing party.

(c) When an answer sets forth the affirmative defense of failure to exhaust prison administrative remedies, pursuant to 42 U.S.C. § 1997e(a), the party asserting that defense shall file a dispositive motion to that effect within seventy (70) days (ten weeks) after entry of the scheduling order.

(d) Pursuant to LR5.4, any party that has consented in writing to electronic service and who has waived the right to personal service shall be deemed served with the *pro se* prisoner's documents and pleadings, other than service of process, when the documents or pleadings are entered on the court's docket through the court's transmission facilities in accordance with the administrative procedures adopted by a general order of this court. Receipt of the Notice of Electronic Filing ("NEF") generated by the court's Electronic Case Files ("ECF") shall constitute the equivalent of service of the *pro se* prisoner's pleading or other paper.

LR99.56.2. Notice Re: Motions for Summary Judgment and Motions to Dismiss for Failure to Exhaust in Pro Se Prisoner Cases.

When a motion for summary judgment or motion to dismiss for failure to exhaust administrative remedies is filed against pro se prisoner litigants, the moving party shall file a separate notice using the court's preapproved Notice or lodge for the magistrate judge's review and signature, and then file, a separate notice, which in ordinary, understandable language advises the prisoner: (a) of the contents of Fed. R. Civ. P. 56 and LR56.1; (b) that the prisoner has the right to file affidavits or other admissible evidence in opposition to the motion for summary judgment or motion to dismiss for failure to exhaust administrative remedies, and that failure to respond might result in the entry of summary judgment against the prisoner; and (c) that if the motion for summary judgment or to dismiss for failure to exhaust is granted, the prisoner's case will be terminated. The moving party shall file and serve the prisoner with the notice simultaneously with the motion. A preapproved form of the notice follows this rule.

PREAPPROVED NOTICE TO PRO SE PRISONERS PURSUANT TO LR99.56.2
(THIS NOTICE IS REQUIRED TO BE GIVEN TO YOU)

The defendants have filed a motion for summary judgment or to dismiss for failure to exhaust, by which they seek to have your case dismissed. If defendants' motion is granted under Rules 12 or 56 of the Federal Rules of Civil Procedure it will end your case. Rule 56 tells you what you must do in order to oppose either of these motions. Generally, judgment must be granted when there is no genuine issue of material fact - that is, if there is no real dispute about any fact that would affect the result of your case, and if the party who asked for summary judgment is entitled to judgment as a matter of law, your case will end. When a party you are suing makes a motion for summary judgment or to dismiss for failure to exhaust that is properly supported by declarations (or other sworn testimony), you cannot simply rely on what your complaint says. Instead, you must set forth your specific facts in declarations, depositions, answers to interrogatories, or authenticated documents, as provided in Rule 56(e), that contradict the facts shown in the defendants' declarations and documents and show that there is a genuine issue of material fact for trial. If you do not submit your own evidence in opposition, judgment, if appropriate, may be entered against you. If such judgment is granted, your case will be dismissed and there will be no trial.

This notice is being provided to you in accordance with Rule 99.56.2, of the Local Rules of Practice for the United States District Court for the District of Hawaii ("Local Rule"). You are required to comply with Local Rule 56.1 when opposing motions for summary judgment or to dismiss for failure to exhaust. This rule sets out the local requirements for motions for summary judgment and to dismiss for failure to exhaust and for opposition to such motions. To oppose a motion, you must file a concise statement that accepts the facts set forth in the moving parties' concise statement, or sets forth all material facts as to which it is contended there exists a genuine issue necessary to be litigated. When preparing the separate concise statement, you are required to reference only the material facts that are absolutely necessary for the court to determine the limited issues presented in the motion (and no others), and each reference shall contain a citation to a particular affidavit, deposition, or other document that supports your interpretation of the material fact. Documents referenced in the concise statement may, but need not, be filed in their entirety if a party concludes that the full context would be helpful to the court (e.g., a deposition miniscript with an index stating what pages may contain key words may often be useful). You shall

extract and highlight the relevant portions of each referenced document. Photocopies of extracted pages, with appropriate identification and highlighting, will be adequate.

The concise statement shall be no longer than five (5) pages, unless it contains no more than 1500 words. When a concise statement is submitted pursuant to the foregoing word limitation, the number of words shall be computed in accordance with Local Rule 7.5(d), and the concise statement shall include the certificate provided for in Local Rule 7.5(e). When resolving motions for summary judgment, the court has no independent duty to search and consider any part of the court record not otherwise referenced in the separate concise statement. If necessary, you may request further guidance from the court regarding the requirements of Rule 56, Federal Rules of Civil Procedure, and Local Rule 56.1.