

1  
2  
3  
4  
5  
6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
10

11 GUILLERMO C. TRUJILLO,

12 Plaintiff,

13 vs.

14 RODRIGUEZ,

15 Defendant.  
16  
17

**Case No. 1:14-cv-01371-DAD-EPG**

**FINDINGS AND RECOMMENDATION  
RECOMMENDING THAT  
DEFENDANT’S MOTION FOR  
SUMMARY JUDGMENT BASED ON  
NON-EXHAUSTION BE GRANTED**

(ECF No. 30)

**OBJECTIONS, IF ANY, DUE WITHIN  
THIRTY DAYS**

18 **I. BACKGROUND**

19 Guillermo C. Trujillo (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma*  
20 *pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint  
21 commencing this action on September 2, 2014. (ECF No. 1.) This action now proceeds on  
22 Plaintiff’s Second Amended Complaint, dated October 5, 2015, (ECF No. 18) on an Eighth  
23 Amendment claim against Defendant Rodriguez. (ECF No. 21.)

24 On May 6, 2016, Defendant Rodriguez (“Defendant”) filed a motion for summary  
25 judgment under Rule 56 of the Federal Rules of Civil Procedure asserting that Plaintiff failed to  
26 exhaust his available administrative remedies with respect to his § 1983 claims in this action.  
27 (ECF No. 30.) On May 23, 2016, Plaintiff filed an opposition to the motion. (ECF No. 34.)  
28 On May 31, 2016, Defendant filed a reply to the opposition. (ECF No. 42.) The matter is now

1 before this Court.

2 **II. SUMMARY OF PLAINTIFF’S COMPLAINT**

3 The events at issue occurred while Plaintiff was incarcerated at the California Substance  
4 Abuse Treatment Facility (“CSATF”) in Corcoran, California.

5 Plaintiff contends that Defendant Rodriguez “unlawfully subjected [him] to target[]  
6 of an assault with a deadly weapon. . .” ECF No. 18, at 3. During medication delivery,  
7 Defendant Rodriguez verbally bribed Plaintiff to get “sexually active” if he agreed to get  
8 himself targeted on the yard. Plaintiff did not agree to her offer, and she immediately had him  
9 assaulted on November 1, 2013. He suffered multiple stab wounds and abrasions to his head.

10 Plaintiff contends that she did this because Plaintiff reported staff misconduct, and she  
11 threatened him with assault on numerous occasions.

12 Plaintiff contends that this constituted cruel and unusual punishment in violation of the  
13 Eighth Amendment.

14 **III. LEGAL STANDARDS**

15 **A. Statutory Exhaustion Requirement**

16 Section 1997e(a) of the Prison Litigation Reform Act of 1995 (PLRA) provides that  
17 “[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any  
18 other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until  
19 such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). Prisoners  
20 are required to exhaust the available administrative remedies prior to filing suit. Jones v. Bock,  
21 549 U.S. 199, 211 (2007); McKinney v. Carey, 311 F.3d 1198, 1199-1201 (9th Cir. 2002).  
22 Exhaustion is required regardless of the relief sought by the prisoner and regardless of the relief  
23 offered by the process. Booth v. Churner, 532 U.S. 731, 741 (2001). The exhaustion  
24 requirement applies to all prisoner suits relating to prison life. Porter v. Nussle, 534 U.S. 516,  
25 532 (2002). An untimely or otherwise procedurally defective appeal will not satisfy the  
26 exhaustion requirement. Woodford v. Ngo, 548 U.S. 81, 90 (2006).

27 As the U.S. Supreme Court recently explained in Ross v. Blake, 136 S.Ct. 1850, 1856  
28 (June 6, 2016) regarding the PLRA’s exhaustion requirement:

1 [T]hat language is ‘mandatory’: An inmate ‘shall’ bring ‘no action’ (or said  
2 more conversationally, may not bring any action) absent exhaustion of available  
3 administrative remedies. . . . [T]hat edict contains one significant qualifier: the  
4 remedies must indeed be ‘available’ to the prisoner. But aside from that  
exception, the PLRA’s text suggests no limits on an inmate’s obligation to  
exhaust—irrespective of any ‘special circumstances.’

5 Id. (internal quotations and citations omitted)

6 In deciding a motion for summary judgment “for failure to exhaust nonjudicial remedies  
7 under the PLRA, a district court may look beyond the pleading and decide disputed issues of  
8 fact.” Morton v. Hall, 599 F.3d 942, 945 (9th Cir. 2010).

9 **B. Motion for Summary Judgment for Failure to Exhaust**

10 The failure to exhaust in compliance with section 1997e(a) of the PLRA is an  
11 affirmative defense that Defendants have the burden of raising and proving. Jones, 549 U.S. at  
12 216; Wyatt v. Terhune, 315 F.3d 1108, 1119 (9th Cir. 2003). On April 3, 2014, the United  
13 States Court of Appeals for the Ninth Circuit issued a decision overruling Wyatt with respect to  
14 the proper procedural device for raising the affirmative defense of exhaustion under section  
15 1997e(a). Albino v. Baca (“Albino II”), 747 F.3d 1162, 1168–69 (9th Cir. 2014) (*en banc*).  
16 Following the decision in Albino II, defendants may raise exhaustion deficiencies as an  
17 affirmative defense under section 1997e(a) in either (1) a motion to dismiss pursuant to Rule  
18 12(b)(6) or (2) a motion for summary judgment under Rule 56. Id. If the Court concludes that  
19 Plaintiff has failed to exhaust, the proper remedy is dismissal without prejudice of the portions  
20 of the complaint barred by section 1997e(e). Jones, 549 U.S. at 223–24; Lira v. Herrera, 427  
21 F.3d 1164, 1175–76 (9th Cir. 2005).

22 Summary judgment is appropriate when it is demonstrated that there “is no genuine  
23 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed.  
24 R. Civ. P. 56(a); Albino II, 747 F.3d at 1169 (“If there is a genuine dispute about material facts,  
25 summary judgment will not be granted.”). A party asserting that a fact cannot be disputed must  
26 support the assertion by “citing to particular parts of materials in the record, including  
27 depositions, documents, electronically stored information, affidavits or declarations,  
28 stipulations (including those made for purposes of the motion only), admissions, interrogatory

1 answers, or other materials, or showing that the materials cited do not establish the absence or  
2 presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to  
3 support the fact.” Fed. R. Civ. P. 56(c)(1). The Court may consider other materials in the  
4 record not cited to by the parties, but is not required to do so. Fed. R. Civ. P. 56(c)(3); Carmen  
5 v. San Francisco Unified Sch. Dist., 237 F.3d 1026, 1031 (9th Cir. 2001); accord Simmons v.  
6 Navajo Cnty., Ariz., 609 F.3d 1011, 1017 (9th Cir. 2010). In judging the evidence at the  
7 summary judgment stage, the Court “must draw all reasonable inferences in the light most  
8 favorable to the nonmoving party.” Comite de Jornaleros de Redondo Beach v. City of  
9 Redondo Beach, 657 F.3d 936, 942 (9th Cir. 2011). The Court must liberally construe  
10 Plaintiff’s filings because he is a *pro se* prisoner. Thomas v. Ponder, 611 F.3d 1144, 1150 (9th  
11 Cir. 2010) (quotation marks and citations omitted).

12 In a summary judgment motion for failure to exhaust, the defendants have the initial  
13 burden to prove “that there was an available administrative remedy, and that the prisoner did  
14 not exhaust that available remedy.” Albino II, 747 F.3d at 1172. If the defendants carry that  
15 burden, “the burden shifts to the prisoner to come forward with evidence showing that there is  
16 something in his particular case that made the existing and generally available administrative  
17 remedies effectively unavailable to him.” Id. The ultimate burden of proof remains with  
18 defendants, however. Id. “If material facts are disputed, summary judgment should be denied,  
19 and the district judge rather than a jury should determine the facts.” Id. at 1166.

#### 20 **IV. DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT**

##### 21 **A. Defendant’s Motion**

22 In her motion for summary judgment, Defendant argues that Plaintiff failed to file a  
23 grievance with the prison regarding the underlying incident. Specifically, Defendant explains:

24 From November 2013 to October 2015, Plaintiff submitted and the SATF  
25 appeals office processed one grievance. (DUF 9.) This grievance, Log No.  
26 SATF-C-13-04905, was submitted at the First Level on December 12, 2013 and  
27 asserted a staff complaint against Officer Munoz because of an unclothed body  
28 search. (DUF 9, 10.) Within the relevant timeframe, Plaintiff failed to process a  
single grievance through the Third Level of Review concerning Defendant  
Rodriguez, or asserting a claim that a staff member was orchestrating inmate  
assaults against him. (DUF 12.)

1 (ECF No. 30-1, p. 2).

2 In support, Defendant submits two declarations. First, Defendant submitted the  
3 declaration of M. Voong, Chief of the Office of Appeals (“OOA”), for the California  
4 Department of Corrections and Rehabilitation (“CDCR”). (ECF No. 30-3). Voong explains  
5 declares under penalty of perjury that “OOA receives, reviews, and maintains inmates’ non-  
6 medical appeals accepted for review at the third level. This is the final level of review in  
7 CDCR’s administrative appeal process, and a final decision at this level is generally required to  
8 exhaust an inmate’s administrative remedies for an appeal.” (ECF No. 30-3, at p. 1.) After  
9 reviewing the records available for such appeals, Voong concludes:

10 OOA’s records show that, during the relevant timeframe, inmate Trujillo  
11 submitted sixteen appeals to the Third Level of Review, that were accepted and  
12 adjudicated. These appeals all concerning allegations at Kern Valley State Prison,  
13 rather than Corcoran Substance Abuse Treatment Facility (SATF), are [numbers  
14 listed, all beginning with “KVSP”]. Notably, none of these appeals address  
15 allegations from SATF, as shown by their institutional log number.

16 (ECF No. 30-3, at p. 3). The declaration also attached supporting documentation of the logs of  
17 Plaintiff’s appeals.

18 Defendant also submitted a declaration from J. Zamora, the Appeals Coordinator at  
19 SATF. Zamora declares under penalty of perjury that CDCR had an administrative appeal  
20 process in place for inmates at the relevant time, which included three formal levels of review:  
21 “All staff members involved in an inmate’s issues were required to be named in an appeal, and  
22 a final decision at the third level of review was, and still is, required to exhaust an inmate’s  
23 administrative remedies. Since January 2011, an inmate has been required to file his appeal  
24 within thirty days of the events being grieved.” (ECF No. 30-4, at p.3). Zamora conducted a  
25 search for any non-medical appeals at SATF by Plaintiff between November 1, 2013 and  
26 October 5, 2015, which were accepted and adjudicated for issues arising during his  
27 incarceration at SATF. His review revealed that Plaintiff only submitted one appeal related to  
28 his incarceration at SATF during the relevant timeframe, which is attached as Exhibit B to the  
Zamora declaration. That grievance is asserted against correctional officer Munoz and does not  
name Defendant Rodriguez. It alleges that Plaintiff was subjected to an unclothed body search

1 in retaliation for filing a 602 appeal against correctional office Munoz. Although Plaintiff filed  
2 other grievances, all of them were screened out at the first or second levels of review. Zamora  
3 attaches the screen out letters that include the reasons for rejecting the appeals.

#### 4 **B. Plaintiff's Opposition to Defendant's Motion for Summary Judgment**

5 In his opposition, Plaintiff claims that he filed a 602 grievance against Defendant  
6 Rodriguez on October 19, 2013 regarding her ongoing bribery to get sexually active with  
7 Plaintiff. Plaintiff says "this grievance was filed days before the incident occurred on  
8 November 1, 2013." (ECF No. 46, at p. 1). Plaintiff also alleges generally that he never failed  
9 to exhaust administrative remedies.

10 Furthermore, Plaintiff accuses Zamora of lying because Zamora's declaration omitted  
11 ten other appeals that were screened out at the first or second level. However, Plaintiff declares  
12 that they were not sent back to Plaintiff, so he could not exhaust the third level of appeals.  
13 Plaintiff claims that Zamora violated appeal time limits.

14 Plaintiff attaches ten letters screening out various appeals for being outside the time  
15 limits or otherwise violating CDCR policy. (ECF No. 46, Exh. A).

16 He also attaches a rough draft of an appeal dated October 30, 2013, which is not on any  
17 602 or other form. (ECF No. 46, at p. 3)

#### 18 **C. Defendant's Reply**

19 Plaintiff's reply argues that Defendant failed to put forth any evidence that he exhausted  
20 administrative remedies as to the incident at issue. His statement about submitting a grievance  
21 on October 19, 2013 is unsupported and in any event cannot concern the incident in the  
22 complaint, which allegedly occurred on November 1, 2013. The rough draft complaint  
23 similarly predates the incident and lacks any proof that it was submitted to the institution.

#### 24 **V. FINDINGS AND RECOMMENDATIONS BASED ON EVIDENCE PRESENTED**

25 After review of all evidence submitted in connection with summary judgment, this  
26 Court finds that Plaintiff has failed to exhaust his administrative remedies prior to filing this  
27 lawsuit and recommends granting Defendant's motion for summary judgment and dismissing  
28 Plaintiff's case for a failure to exhaust.

1 Defendant submitted evidence in the form of sworn declarations and supporting  
2 documents that indicate that SATF had an appellate process available at the time of the incident  
3 that involved submission of a form 602 grievance at the institution and ultimately appeal to the  
4 third level. Defendant sets forth admissible evidence that Plaintiff had failed to submit a proper  
5 602 grievance regarding this incident at SATF and also failed to submit a grievance that went  
6 through the third level of appeals regarding the incident.

7 Plaintiff's opposition concedes that no such grievance went through the three levels of  
8 review. Plaintiff refers to two potential grievances regarding Defendant Rodriguez, but both  
9 are dated prior to the incident. Moreover, there is no proof that either were sent to the appeals  
10 office, not to mention procedurally proper to be accepted at the first and second level, or  
11 submitted to a third level of review.

12 Although Plaintiff questions Zamora's truthfulness, Plaintiff's allegations about missing  
13 certain appeals that were screened out does not raise a significant question regarding the  
14 authenticity of the facts in Zamora's declaration. On the contrary, the Court understood that  
15 Zamora conceded that additional appeals were submitted but screened out.

16 Neither party fully explained whether Plaintiff submitted an appeal covering this topic  
17 to the first level for a procedural reason, which was screened out, or never submitted any appeal  
18 covering this topic. Again, Plaintiff only describes appeals against Rodriguez predating the  
19 conduct at issue, so appears to concede that he did not file a grievance covering the conduct at  
20 issue in the complaint in the thirty days following that incident. In any event, whether an  
21 improper appeal covering this conduct was submitted and rejected, or never submitted, is  
22 ultimately not relevant to the issue of exhaustion under the circumstances because Defendant  
23 submitted undisputed evidence that Plaintiff failed to fully exhaust his administrative remedies  
24 and Plaintiff did not put forth any evidence that the appeals process was unavailable at the time.

## 25 **VII. CONCLUSION AND RECOMMENDATIONS**

26 For those reasons, the Court finds that Defendant has met its burden of proving its  
27 affirmative defense of failure to exhaust Plaintiff's administrative grievances before filing the  
28 complaint and RECOMMENDS that Plaintiff's lawsuit be dismissed without prejudice for

1 failure to exhaust.

2 Based upon these Findings of Fact and Conclusions of Law, **IT IS HEREBY**  
3 **RECOMMENDED that:**

- 4 1. Defendant’s motion for summary judgment on the issue of failure to exhaust,  
5 filed on May 6, 2016 (ECF No. 30), be GRANTED;
- 6 2. Plaintiff’s case be DISMISSED without prejudice for failure to exhaust.

7 These findings and recommendations are submitted to the United States District Judge  
8 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). **Within thirty**  
9 **(30) days** after being served with these findings and recommendations, any party may file  
10 written objections with the court. Such a document should be captioned “Objections to  
11 Magistrate Judge's Findings and Recommendations.” Any reply to the objections shall be  
12 served and filed within ten days after service of the objections. The parties are advised that  
13 failure to file objections within the specified time may result in the waiver of rights on appeal.  
14 Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923  
15 F.2d 1391, 1394 (9th Cir. 1991)).

16  
17 IT IS SO ORDERED.

18 Dated: December 8, 2016

18 /s/ Eric P. Gray  
19 UNITED STATES MAGISTRATE JUDGE