

1 the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account
2 exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

3 II. Screening Standard

4 The court is required to screen complaints brought by prisoners seeking relief against a
5 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
6 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
7 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
8 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

9 Section 1997(e)(a) of Title 42 of the United States Code provides that “[n]o action shall be
10 brought with respect to prison conditions under section 1983 of this title, . . . until such
11 administrative remedies as are available are exhausted.” 42 U.S.C. § 1997(e)(a) (also known as
12 the Prison Litigation Reform Act (“PLRA”). A prisoner must exhaust his administrative
13 remedies before he commences suit. McKinney v. Carey, 311 F.3d 1198, 1199–1201 (9th Cir.
14 2002).

15 Plaintiff alleges that, on December 11, 2015, a correctional officer did not give him his
16 mail. On the portion of the civil action form concerning exhaustion of remedies, plaintiff
17 indicates that there is a grievance procedure available at his institution, and he has filed a
18 grievance. (ECF No. 1 at 2.) He also indicates that the grievance process is not completed. (Id.)

19 Because plaintiff brought suit against the defendants on January 14, 2016, he is required
20 to have completed the inmate appeals process as to his claims by that date. See Vaden v.
21 Summerhill, 449 F.3d 1047, 1051 (9th Cir. 2006) (under 42 U.S.C. § 1997e(a), a prisoner “may
22 initiate litigation in federal court only after the administrative process ends and leaves his
23 grievances unredressed.”); see also Akhtar v. Mesa, 698 F.3d 1202, 1210 (9th Cir. 2012) (“a
24 prisoner does not comply with [the exhaustion] requirement by exhausting available remedies
25 during the course of the litigation.”) Unexhausted claims are subject to dismissal.

26 Thus the undersigned will recommend that this action be dismissed without prejudice to
27 refiling after plaintiff exhausts administrative remedies for his claim.

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In accordance with the above, IT IS HEREBY ORDERED that:

1. Plaintiff's request for leave to proceed in forma pauperis is granted.
2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees shall be collected and paid in accordance with this court's order to the Director of the California Department of Corrections and Rehabilitation filed concurrently herewith.
3. The Clerk of Court shall assign a district judge to this action.

IT IS HEREBY RECOMMENDED THAT this action be dismissed without prejudice for failure to exhaust administrative remedies.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, plaintiff may file written objections with the court. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: January 25, 2016



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE