

1
2 UNITED STATES DISTRICT COURT
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 MIGUEL A. CELIS, V74892,

6 Plaintiff,

7 v.

8 R. RUIZ, et al.,

9 Defendant(s).

Case No. [19-cv-00920-CRB](#) (PR)

**ORDER GRANTING MOTION
FOR SUMMARY JUDGMENT
ON GROUNDS OF FAILURE TO
PROPERLY EXHAUST**

(ECF No. 22)

10 Currently before the court for decision is defendants' motion for summary judgment under
11 Federal Rule of Civil Procedure 56 on the grounds that plaintiff failed to properly exhaust
12 available administrative remedies before filing suit, as required by the Prison Litigation Reform
13 Act (PLRA). For the reasons that follow, the motion will be granted.

14 **STATEMENT OF THE CASE**

15 On February 2, 2019, plaintiff, a prisoner at Salinas Valley State Prison (SVSP), filed a pro
16 se complaint under 42 U.S.C. § 1983 alleging deliberate indifference to his health and safety by
17 several correctional and medical officials at SVSP. ECF No. 1.

18 Plaintiff alleges that on November 23, 2017, Correctional Officer R. Ruiz acted with
19 deliberate indifference to plaintiff's health and safety when, in an attempt to stop an assault on
20 plaintiff by another prisoner, Ruiz fired a rubber bullet at close range and without warning hitting
21 plaintiff on the head and causing him serious head injury. Id. at 6. Plaintiff further alleges that
22 doctors Steven Virant, Carl Bourne and Anthony Huyuth, and Chief Medical Officer Bright, have
23 been deliberately indifferent to his serious medical needs by failing to properly address and treat
24 his repeated complaints of severe headaches, dizziness and memory loss. Id. at 8-12

25 Defendants move for summary judgment under Federal Rule of Civil Procedure 56 on
26 grounds that plaintiff failed to properly exhaust available administrative remedies before filing
27 suit, as required by the PLRA. ECF No. 22. Plaintiff did not file an opposition despite being
28 advised to do so.

1 **STATEMENT OF UNDISPUTED FACTS**

2 On January 8, 2018, plaintiff filed grievance SVSP-18-000156, which alleged that Ruiz
3 used inappropriate or excessive force by shooting plaintiff with a rubber foam bullet during an
4 altercation between plaintiff and another prisoner on November 27, 2017. ECF No. 22, Spaich
5 Decl., Ex. B at 3-6. The grievance bypassed the first level of review and was processed as a staff
6 complaint at the second level of review. Id. at 7-8. On February 4, 2018, the grievance was
7 denied at the second level. Id. The second level response found that Ruiz did not violate
8 California Department of Corrections and Rehabilitation (CDCR) policy and noted that plaintiff
9 was interviewed about the issue, and his only statement in support of his claim was “no
10 comment.” Id. Plaintiff appealed the denial to the third level of review. At the third level, the
11 office of appeals received plaintiff’s appeal on March 1, 2018 but cancelled it on the ground that
12 plaintiff exceeded the time limits to submit the appeal despite having the opportunity to do so
13 within the prescribed time limits. Id. at 2. The letter informing him of the cancellation decision
14 advised the he could separately appeal the cancellation decision. Id. Plaintiff did not do so. Id. at
15 Ex. A.

16 On November 28, 2018, plaintiff filed healthcare grievance SVSP-HC-18002544, asserting
17 that he was shot with a rubber foam bullet on November 27, 2017, requesting an MRI, and
18 claiming that medical staff violated his constitutional rights by denying the MRI. ECF No. 22,
19 Gates Decl., Ex. B at 4-5. He received a response from the institutional level – the first level of
20 review – stating that no intervention by the institution was necessary. Id. at 2-3. The response
21 also notified plaintiff that he could appeal the decision by submitting his grievance to the
22 headquarters level, and the headquarters level review would constitute the final disputation and
23 exhaust his administrative remedies. Id. Plaintiff did not appeal to the headquarters level. Id. at
24 Ex. A.

25 **DISCUSSION**

26 A. Standard of Review

27 “The PLRA mandates that inmates exhaust all available administrative remedies before
28 filing ‘any suit challenging prison conditions,’ including, but not limited to, suits under § 1983.”

1 Albino v. Baca, 747 F.3d 1162, 1171 (9th Cir. 2014) (en banc) (citing Woodford v. Ngo, 548 U.S.
2 81, 85 (2006)). To the extent that the evidence in the record permits, the appropriate procedural
3 device for pretrial determination of whether administrative remedies have been exhausted under
4 the PLRA is a motion for summary judgment under Rule 56. Id. at 1168. The burden is on the
5 defendant to prove that there was an available administrative remedy that the plaintiff failed to
6 exhaust. Id. at 1172. If the defendant meets that burden, the burden shifts to the prisoner to
7 present evidence showing that there is something in his particular case that made the existing and
8 generally available administrative remedies effectively unavailable to him. Id. The ultimate
9 burden of proof remains with the defendant, however. Id.

10 If undisputed evidence viewed in the light most favorable to the prisoner shows a failure to
11 exhaust, a defendant is entitled to summary judgment under Rule 56. Id. at 1166. But if material
12 facts are disputed, summary judgment should be denied and the district judge rather than a jury
13 should determine the facts in a preliminary proceeding. Id.

14 B. Analysis

15 The PLRA amended 42 U.S.C. § 1997e to provide that “[n]o action shall be brought with
16 respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner
17 confined in any jail, prison, or other correctional facility until such administrative remedies as are
18 available are exhausted.” 42 U.S.C. § 1997e(a). Section 1997e(a) requires “proper exhaustion” of
19 available administrative remedies. Ngo, 548 U.S. at 93. A prisoner not only must pursue every
20 available step of the prison appeal process but also must adhere to “deadlines and other critical
21 procedural rules” of that process. Id. at 90. “[I]t is the prison’s requirements, and not the PLRA,
22 that define the boundaries of proper exhaustion.” Jones v. Bock, 549 U.S. 199, 218 (2007).

23 A prisoner must “exhaust his administrative remedies prior to sending his complaint to the
24 district court.” Vaden v. Summerhill, 449 F.3d 1047, 1051 (9th Cir. 2006) (emphasis added). He
25 cannot comply with the PLRA’s exhaustion requirement “by exhausting available administrative
26 remedies during the course of the litigation.” Akhtar v. Mesa, 698 F.3d 1202, 1210 (9th Cir.
27 2012) (citation omitted).

28 CDCR provides any prisoner or parolee under its jurisdiction the right to appeal “any

1 policy, decision, action, condition, or omission by the department or its staff that the inmate or
2 parolee can demonstrate as having a material adverse effect upon his or her health, safety, or
3 welfare.” Cal. Code Regs. tit. 15, § 3084.1(a). CDCR’s appeal process consists of three levels of
4 appeal: (1) first level appeal filed with one of the institution’s appeal coordinators, (2) second level
5 appeal filed with the institution head or designee, and (3) third level appeal filed with the CDCR
6 director or designee. Id. §§ 3084.7, 3084.8. A prisoner exhausts CDCR’s appeal process by
7 obtaining a decision from the third level of appeal review. Harvey v. Jordan, 605 F.3d 681, 683
8 (9th Cir. 2010). A cancellation or rejection of an appeal does not exhaust available administrative
9 remedies. Cal. Code Regs. tit. 15, § 3084.1(b). A cancelled appeal may later be accepted if a
10 determination is made that the cancellation was in error or new information is received that makes
11 the appeal eligible for further review. Id. § 3084.6(a)(3). A prisoner therefore must appeal the
12 decision to cancel an appeal in order to exhaust. See id. § 3084.6(e).

13 To submit a grievance, an inmate must use a CDCR Form 602 to “describe the specific
14 issue under appeal and the relief requested.” Cal. Code Regs. tit. 15, § 3084.2(a). Each grievance
15 is limited to one issue or related set of issues. Id. § 3084.2(a)(1). A grievance should include
16 sufficient information “to allow prison officials to take appropriate responsive measures.” Griffin
17 v. Arpaio, 557 F.3d 1117, 1121 (9th Cir. 2009) (citation and internal quotation omitted).

18 Prisoners also may file complaints regarding healthcare policies, decision, actions,
19 conditions, or omissions using a CDCR Form 602. Cal. Code Regs. tit. 15, § 3999.226,
20 3999.227(a). Such complaints are subject to two levels of review – an institutional level of review
21 and a headquarters level of review. Id.

22 There are “three kinds of circumstances in which an administrative remedy, although
23 officially on the books, is not capable of use to obtain relief.” Ross v. Blake, 136 S. Ct. 1850,
24 1859 (2016). First, “an administrative procedure is unavailable when (despite what regulations or
25 guidance materials may promise) it operates as a simple dead end—with officers unable or
26 consistently unwilling to provide any relief to aggrieved inmates.” Id. Second, “an administrative
27 scheme might be so opaque that it becomes, practically speaking, incapable of use.” Id. Third, an
28 administrative remedy is not available “when prison administrators thwart inmates from taking

1 advantage of a grievance process through machination, misrepresentation, or intimidation.” Id. at
2 1860.

3 The evidence submitted by defendants shows that plaintiff did not file an appeal
4 challenging the cancellation of SVSP-18-000156 or an appeal challenging the denial of SVSP-
5 HC-18002544. In both instances, the responses to plaintiff’s grievances informed him of the steps
6 he needed to take in order to exhaust available administrative remedies but he failed to do so.
7 There is no evidence that plaintiff was prevented from taking these steps by officers unable or
8 unwilling to provide any relief, that the administrative scheme was incapable of use, or that he was
9 thwarted by prison administrators from taking advantage of the grievance process. See id. at
10 1859-60.

11 In sum, the evidence submitted by defendants meets their burden of proving that there was
12 an available administrative remedy that plaintiff failed to properly exhaust in connection with his
13 § 1983 claims before filing this action. See Albino, 747 F.3d at 1172. The burden then shifted to
14 plaintiff to present evidence that there was something in this particular case that made existing and
15 generally available administrative remedies effectively unavailable to him. See id. Plaintiff did
16 not do so. Accordingly, defendants are entitled to summary judgment under Rule 56. See id. at
17 1166.

18 **CONCLUSION**

19 For the foregoing reasons, defendants’ motion for summary judgment (ECF No. 22) on
20 grounds that plaintiff failed to properly exhaust available administrative remedies before filing suit
21 is GRANTED and, pursuant to the law of the circuit, plaintiff’s claims are DISMISSED without
22 prejudice.

23 **IT IS SO ORDERED.**

24 Dated: October 23, 2019

25 
26 CHARLES R. BREYER
27 United States District Judge
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UNITED STATES DISTRICT COURT
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MIGUEL A. CELIS,
Plaintiff,
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Case No. 3:19-cv-00920-CRB

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 23, 2019, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Miguel A. Celis ID: V74892
Salinas Valley State Prison
P.O. Box 1050
Soledad, CA 93960

Dated: October 23, 2019

Susan Y. Soong
Clerk, United States District Court

By: 
Lashanda Scott, Deputy Clerk to the
Honorable CHARLES R. BREYER