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NOT FOR PUBLICATION

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Ronald N. Jose,	)	No. CV 10-1594-PHX-GMS (JRI)
Plaintiff,	)	
vs.	)	<b>ORDER</b>
Steven Williamson, et al.,	)	
Defendant.	)	

Plaintiff Ronald N. Jose, who is confined in the Saguaro Correctional Center (SCC) of the Corrections Corporation of America (CCA), filed a *pro se* civil rights complaint pursuant to 42 U.S.C. § 1983. (Doc. 1.) Defendant Meiner moves to dismiss.<sup>1</sup> (Doc. 10.) The motion is ready for ruling. (Docs. 13, 14.)

The Court will grant the motion and terminate the action.

**I. Background**

In the Complaint, Plaintiff alleged that several SCC employees violated his rights when they removed Plaintiff from general population (GP) and placed him in segregation for 44 days without a misconduct report. After 44 days, Defendant informed Plaintiff that in order to return to GP, Plaintiff had to complete an 18-month Special Housing Incentive Program (SHIP) for inmates considered to be management problems or dangerous security

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<sup>1</sup>The Court issued a Notice pursuant to Wyatt v. Terhune, 315 F.3d 1108, 1120 n.14 (9th Cir. 2003), advising Plaintiff of his obligation to respond. (Doc. 11.)

1 threats. Plaintiff asserted that he was not a management or security problem and refused to  
2 sign up for SHIP. Plaintiff was placed for an indefinite period in segregation, apparently in  
3 SHIP, without disciplinary charges or a hearing.

4 On screening, the Court held that Plaintiff stated a due process claim against Meiner  
5 and directed him to answer the claim against him and dismissed the remainder of the claims  
6 and Defendants. (Doc. 5.)

7 Defendant now moves to dismiss on the ground that Plaintiff failed to exhaust his  
8 administrative remedies. (Doc. 10.)

## 9 **II. Exhaustion of Administrative Remedies**

### 10 **A. Legal Standard**

11 Under the Prison Litigation Reform Act (PLRA), a prisoner must exhaust available  
12 administrative remedies before bringing a federal action concerning prison conditions. See  
13 42 U.S.C. § 1997e(a); Griffin v. Arpaio, 557 F.3d 1117, 1119 (9th Cir. 2009). Exhaustion  
14 is required for all suits about prison life, Porter v. Nussle, 534 U.S. 516, 523 (2002),  
15 regardless of the type of relief offered through the administrative process, Booth v. Churner,  
16 532 U.S. 731, 741 (2001). And a prisoner must complete the administrative review process  
17 in accordance with the applicable rules. See Woodford v. Ngo, 548 U.S. 81, 92 (2006).

18 Exhaustion is an affirmative defense. Jones v. Bock, 549 U.S. 199, 212 (2007). Thus,  
19 the defendant bears the burden of raising and proving the absence of exhaustion. Wyatt v.  
20 Terhune, 315 F.3d 1108, 1119 (9th Cir. 2003). Because exhaustion is a matter of abatement  
21 in an unenumerated Rule 12(b) motion, a court may look beyond the pleadings to decide  
22 disputed issues of fact. Id. at 1119-20. Further, a court has broad discretion as to the  
23 method to be used in resolving the factual dispute. Ritza v. Int'l Longshoremen's &  
24 Warehousemen's Union, 837 F.2d 365, 369 (9th Cir. 1988) (quotation omitted).

### 25 **B. Parties' Contentions**

#### 26 **1. Defendant**

27 In support of his motion, Defendant submits the affidavit of Juan Valenzuela (Doc.  
28 10, Ex. 1, Valenzuela Aff.); CCA, Inmate/Resident Grievance Procedures (id., Attach. A),

1 Plaintiff's acknowledgment of receipt of Inmate Handbook (id., Attach. B); and the Inmate  
2 Handbook (id., Attach. C).

3 Valenzuela attests that his duties include maintaining all grievance records and the  
4 Grievance Log. (Id., Ex. 1, Valenzuela Aff. ¶ 5.) The grievance procedure is a multi-tiered  
5 system that includes: (1) the informal resolution process, which is initiated by submitting a  
6 Request- for-Service form; (2) if the inmate is dissatisfied with the response to his Request  
7 for Service, he may file an Informal Resolution form within 7 days of the incident  
8 complained of; (3) within 5 days from the time he receives the decision of the facility  
9 grievance officer, the inmate can submit a formal grievance; and (4) if dissatisfied with the  
10 decision of the Grievance Coordinator, the inmate has 5 days to appeal to the Warden. The  
11 Warden then has 15 days to respond to the appeal, and this response is final and constitutes  
12 exhaustion of administrative remedies. (Id. ¶¶ 14-22.) Under the SCC grievance policy,  
13 grievable matters include individual staff actions. (Id. ¶¶ 11, 30.) Valenzuela attests that  
14 there are no grievances filed by Plaintiff regarding Defendant informing Plaintiff that he had  
15 to complete the 18-month SHIP placement. (Id. ¶ 31.)

16 Defendant argues that the evidence shows that Plaintiff did not file grievances about  
17 the claim against Defendant and, therefore, Plaintiff did not exhaust his administrative  
18 remedies. (Doc. 10 at 4.)

## 19 **2. Plaintiff**

20 In opposition, Plaintiff submits a two-page response. (Doc. 13.) He argues that the  
21 Inmate Handbook states that classification issues and disciplinary hearings are non-grievable.  
22 (Id. ¶ 2, ref. Doc. 10, Ex. C at 8.) He asserts that he was placed in disciplinary segregation  
23 for two years and appealed his placement to the Warden. (Id. ¶ 3.) Plaintiff further asserts  
24 that the Inmate Handbook excerpts explaining the grievance procedure do not contain  
25 language that the inmate must both appeal to the Warden and grieve placement in  
26 segregation; in other words, use two procedures. (Id. ¶ 4.) Plaintiff argues that because he  
27 submitted his appeal to the Warden regarding the placement in segregation, the lack of a  
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1 disciplinary report, and recommendation for SHIP, prison officials were sufficiently aware  
2 of the nature of the claim. (Id. ¶ 5.)

3 Plaintiff does not submit a copy of his appeal to the warden.

### 4 **3. Reply**

5 Defendant replies that Plaintiff’s self-serving statements are unverified and  
6 inadmissible. (Doc. 14 at 2.) He reasserts that individual staff actions are clearly grievable  
7 under the grievance policy. (Id.) Defendant also asserts that if an inmate disagrees with the  
8 information used to designate him for SHIP housing, the inmate must use the grievance  
9 procedure appeal process and appeal to the Warden. (Id.) Defendant cites to the  
10 Inmate/Resident Grievance Procedures, which state that non-grievable matters include  
11 classification status and that “(all classification status must be addressed in accordance with  
12 classification procedures in place at the facility).” (Doc. 10, Ex. 1, Attach. A at 4.)  
13 Defendant also refers to the Inmate Handbook, which has a list of non-grievable matters,  
14 including classification, and states with regard to classification “(must utilize the appeal  
15 process).” (Id., Attach. C at 8.) Defendant submits the affidavit of Ben Griego, Assistant  
16 Warden of SCC, who attests that the decision to place Plaintiff into SHIP is not an individual  
17 decision, but rather a decision made by a committee, of which Defendant was only one  
18 member. (Id., Ex. 1, Griego Aff. ¶ 13.) In addition, Griego attests that there were no  
19 classification/housing appeals filed by Plaintiff regarding his SHIP placement. (Id., Ex. 1,  
20 Griego Aff. ¶ 18.) Finally, Defendant asserts that as to Plaintiff’s argument that he need not  
21 both grieve and appeal, in fact, the record shows that he did neither. (Doc. 14 at 3.)

### 22 **C. Analysis**

23 The Court will grant Defendant’s motion and dismiss Plaintiff’s claim without  
24 prejudice. Defendant presents evidence of an available appeal process and that Plaintiff  
25 failed to use the process by appealing his placement to the Warden. Plaintiff fails to  
26 adequately rebut Defendant’s evidence.

1 Defendant provides evidence that grievances can be filed regarding individual staff  
2 matters and submits the grievance procedure. In addition, Defendant asserts that  
3 classification issues are non-grievable but can be addressed in accordance with the  
4 procedures in place at the facility. (Doc. 10, Ex. 1, Attach. A at 4, Ex. C, Inmate Handbook  
5 at 8.) Defendant provides evidence that Plaintiff did not use the grievance procedure and  
6 argues that the matter should have been grieved as a staff action. But in his reply, Defendant  
7 asserts that “SHIP placement is a housing/classification issue over which the facility has  
8 control,” and he submits evidence that placement in SHIP housing was a classification  
9 matter, not an individual staff action. (Doc. 14 at 2, id., Griego Aff. ¶ 14.)

10 Defendant appears to be arguing that Plaintiff’s claim is that Defendant *told* Plaintiff  
11 that he would be placed in SHIP and so a grievance could have been filed about that staff  
12 action. But the Court finds that the gravamen of Plaintiff’s claim is his placement in SHIP,  
13 not Defendant’s statement about that placement. On this record, the Court is unpersuaded  
14 that Plaintiff was required to use the full grievance procedure because the grievance  
15 procedure states that classification is non-grievable.

16 Defendant must demonstrate that there were remedies available to Plaintiff. See  
17 Wyatt, 315 F.3d at 1119; see also Brown v. Valoff, 422 F.3d 926, 936-37 (2005). Defendant  
18 also provides evidence that classification can be appealed to the Warden. This was  
19 apparently Plaintiff’s understanding; he claims that he did file such an appeal. But Defendant  
20 submits evidence that Plaintiff did not appeal the classification, and Plaintiff does not provide  
21 a copy of his appeal to the Warden. Moreover, Plaintiff does not state when he filed the  
22 appeal or to whom he gave it; Plaintiff’s unsupported assertion that he filed an appeal is not  
23 sufficient to rebut Defendant’s evidence that no such appeal was submitted.

24 The Court notes that attached to Plaintiff’s Complaint is a “Disciplinary Appeal to the  
25 Warden,” dated October 18, 2009. (Doc. 1, Ex. 3 E.) It is unclear if this appeal is the one  
26 to which Plaintiff refers in his opposition, but it is the only one in the record. This appeal is  
27 from charges of failure to follow verbal or posted rules. In the appeal, Plaintiff complains  
28 that in October 2008, he was placed on pre-hearing detention without a timely disciplinary

1 report and without a timely hearing. He further states that “[s]ince then I have been harassed  
2 and penalized for failing to participate in a program I was not required to take which  
3 constitutes a violation. . . . Please remedy.”

4 When a prison’s grievance procedures do not specify the requisite level of factual  
5 detail, “a grievance suffices if it alerts the prison to the nature of the wrong for which redress  
6 is sought.” Griffin v. Arpaio, 557 F.3d 1117, 1120 (9th Cir. 2009). This standard “advances  
7 the primary purpose of a grievance: to notify the prison of a problem.” Id. And it is  
8 consistent with the Supreme Court’s holding in Jones that a prison’s own procedures define  
9 the contours of proper exhaustion. Id. Here, the appeal form requests the reasons for  
10 appealing the disciplinary findings. (Doc. 1, Ex. 3 E.)

11 The Court finds that the disciplinary appeal of October 18, 2009, would not put prison  
12 officials on notice of Plaintiff’s claim regarding placement in SHIP. First, the appeal is an  
13 appeal from specific disciplinary charges, not classification. Next, the issues raised in the  
14 appeal relate to the dismissed claims in the Complaint—pre-hearing detention—or possibly  
15 some disciplinary charge filed later; in the appeal Plaintiff refers to pre-hearing detention  
16 imposed in October 2008, but the appeal is dated October 2009. And third, the vague  
17 complaint that Plaintiff has been “harassed and penalized” for not participating in a program  
18 is insufficient to put prison officials on notice that Plaintiff objected to his placement in  
19 SHIP; the appeal does not even mention SHIP.

20 The Court will grant the motion and dismiss the claim against Meiner and will dismiss  
21 Meiner. Because no claims remain, the Court will terminate the action.

22 **IT IS ORDERED:**


23 (1) The reference to the Magistrate Judge is withdrawn as to Defendant’s Motion to  
24 Dismiss (Doc. 10).

25 (2) Defendant’s Motion to Dismiss (Doc. 10) is **granted**, the claim against Meiner  
26 is **dismissed without prejudice** for failure to exhaust administrative remedies, and Meiner  
27 is **dismissed**.

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1 (3) The action is terminated, and the Clerk of Court must enter judgment  
2 accordingly.

3 DATED this 17th day of November, 2010.

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6 G. Murray Snow  
7 United States District Judge  
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