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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

ADRIAN SCOTT MORGAN,  
Plaintiff,  
v.  
THE COUNTY OF LOS ANGELES, *et*  
*al.*, AND DOES 1 THROUGH 10,  
inclusive  
Defendants.

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CASE NO. CV 08-8357 ODW (AGR<sub>x</sub>)  
ORDER GRANTING DEFENDANTS'  
MOTION TO DISMISS [91]

Currently before the Court is Defendants County of Los Angeles (sued erroneously as Los Angeles County Sheriff's Department), Sheriff Leroy Baca, Deputy Eric Tunfors, Dr. Chu-Hsian Chi, Dr. Policarpio F. Enriquez, Dr. Kamron K. Hakhamimi, Hyo N. Lee, R.N., Suzanne M. McDonald, R.N.P., Dr. Patrick C. Paik, and Dr. Parvaneh P. Solnoui's ("Defendants"), Motion to Dismiss Plaintiff Adrian Scott Morgan's ("Plaintiff") Third Amended Complaint. (Dkt. No. 91.) Having considered the matter, the Court deems the matter appropriate for decision without oral argument pursuant to Rule 78 of the Federal

1 Rules of Civil Procedure (“Rule \_\_”) and Local Rule 7-15 and **GRANTS** the instant  
2 Motion.

3 Plaintiff instituted this action alleging five claims against Defendants: (1) *Monell*  
4 claim against the Los Angeles County (“County”); (2) Eighth Amendment claim for  
5 failure to furnish medical care against individual Defendants; (3) Fourteenth Amendment  
6 claim against individual Defendants; (4) Conspiracy to violate civil rights; and (5)  
7 violation of the American Disabilities Act against the County and official Defendants  
8 only. Plaintiff bases his claims on allegations that describe a series of events showing an  
9 utter failure by various prison officials and employees in attending to Plaintiff’s medical  
10 needs (left femur fracture) for a period of over two years. At this time, Defendants move  
11 to dismiss Plaintiff’s claims. As a threshold matter, the Court addresses whether Plaintiff  
12 exhausted his administrative remedies pursuant to 42 U.S.C. § 1997e(a).

13 The Court recognizes Plaintiff’s unfortunate circumstances. It is clear, however,  
14 that Plaintiff must exhaust his administrative remedies prior to instituting an action in this  
15 Court. Specifically, § 1997e(a) of the Prison Litigation Reform Act (“PLRA”) provides  
16 that “[n]o action shall be brought with respect to prison conditions under § 1983 of this  
17 title, or any other Federal law, by a prisoner confined in any jail, or other correctional  
18 facility until such administrative remedies as are available are exhausted.” 42 U.S.C. §  
19 1997e(a). Prisoners are thus required to exhaust all available administrative remedies  
20 prior to filing suit. *Jones v. Bock*, 549 U.S. 199, 211 (2007); *McKinney v. Carey*, 311  
21 F.3d 1198, 1199-1201 (9th Cir. 2002). Exhaustion of administrative remedies is  
22 mandatory regardless of the relief offered by the process, *Booth v. Churner*, 532 U.S.  
23 731, 741 (2001), and applies to all prisoner suits relating to prison life. *Porter v. Nussle*,  
24 534 U.S. 516, 532 (2002). In order to properly exhaust administrative remedies, an  
25 inmate must “make full use of the prison grievance process.” *Woodford v. Ngo*, 548 U.S.  
26 81, 94-95 (2006).

27 The exhaustion requirement is not jurisdictional, but rather creates an affirmative  
28 defense that a defendant may raise in a non-enumerated Rule 12(b) motion. *Wyatt v.*  
*Terhune*, 315 F.3d 1108, 1117-19 (9th Cir. 2003). The defendant bears the burden of

1 raising and proving the absence of exhaustion. *Id.* at 1119. In deciding the motion, “the  
2 court may look beyond the pleadings and decide disputed issues of fact.” *Id.* If the court  
3 concludes that the prisoner has not exhausted all of his available administrative remedies,  
4 “the proper remedy is dismissal of the claim without prejudice.” *Id.* at 1120. If a  
5 complaint contains exhausted and unexhausted claims, “the court proceeds with the good  
6 and leaves the bad.” *Jones*, 549 U.S. at 221.

7 In this case, Plaintiff implicitly admits to the fact that his administrative remedies  
8 were not exhausted by arguing only that exhaustion was not necessary because Plaintiff  
9 is seeking monetary damages. (Opp’n at 3-4.) In support, Plaintiff bases his argument  
10 on outdated Ninth Circuit authority. The Supreme Court in *Booth* established that  
11 Congress mandated exhaustion regardless of the relief offered through administrative  
12 procedures. 532 U.S. at 741 (“Congress’s imposition of an obviously broader exhaustion  
13 requirement makes it highly implausible that it meant to give prisoners a strong  
14 inducement to skip the administrative process simply by limiting prayers for relief to  
15 money damages not offered through administrative grievance mechanisms.”).  
16 Exhaustion, therefore, is no longer left to the discretion of the district court, but is  
17 mandatory. *Id.* at 739. Accordingly, the Court **GRANTS** Defendants’ Motion to  
18 Dismiss Plaintiff’s Third Amended Complaint for failure to exhaust his administrative  
19 remedies. The case shall be dismissed without prejudice.<sup>1</sup>

20  
21 **IT IS SO ORDERED.**

22 July 19, 2011

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25 \_\_\_\_\_  
26 HON. OTIS D. WRIGHT, II  
27 UNITED STATES DISTRICT JUDGE

28 \_\_\_\_\_  
<sup>1</sup> We construe the dismissal of this case to be without prejudice. *See Wyatt*, 315 F.3d at 1120 (explaining that if the court concludes that a prisoner has failed to exhaust, the proper remedy is dismissal without prejudice).