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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JOSHUA TODD WOOLRIDGE,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION, (Doc. 1)
et al.,

Defendants.

CASE NO. 1:09-cv-00158-AWI-GSA PC

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSAL OF ACTION,
WITHOUT PREJUDICE, FOR FAILURE TO
EXHAUST PRIOR TO FILING SUIT

OBJECTIONS DUE WITHIN THIRTY DAYS

Findings and Recommendations Following Screening of Complaint

I. Plaintiff’s Failure to Exhaust Administrative Remedies

Plaintiff Joshua Todd Woolridge is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983 and California law. Plaintiff filed this action January 26, 2009.

Plaintiff concedes that he has not exhausted the inmate appeal process but contends that it is unconstitutional, violating Plaintiff’s 14th Amendment right of due process. Plaintiff adds that he is pursuing injunctive relief against the lockdown that is the subject of his appeal. *See* Doc. 1, p. 2, ¶ IIC.

Pursuant to the Prison Litigation Reform Act of 1995 (“PLRA”), “[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). Accordingly, prisoners are

1 required to exhaust available administrative remedies prior to filing suit. Jones v. Bock, 549
2 U.S. 199, 211 (2007); McKinney v. Carey, 311 F.3d 1198, 1199-1201 (9th Cir. 2002). “A
3 prisoner’s concession to nonexhaustion is valid grounds for dismissal” Wyatt v. Terhune,
4 315 F.3d 1108, 1120 (9th Cir.), *cert. denied*, 540 U.S. 810 (2003).

5 To satisfy § 1997e(a), California state prisoners are required to use the available process
6 to exhaust their claims prior to filing suit. Woodford v. Ngo, 548 U.S. 81, 85 (2006); McKinney,
7 *supra*, 311 F.3d at 1199-1201. “[E]xhaustion is mandatory under the PLRA and . . . unexhausted
8 claims cannot be brought in court.” Jones, *supra*, 549 U.S. 211 (*citing* Porter v. Nussle, 534 U.S.
9 516, 524 (2002)).

10 The exhaustion requirement applies to all prisoner suits relating to prison life. Porter,
11 *supra*, 435 U.S. at 532. Exhaustion is required regardless of the relief sought by the prisoner
12 and regardless of the relief offered by the process. Booth v. Churner, 532 U.S. 731, 741 (2001).
13 Exhaustion of prison grievance procedures is now mandatory, even if the procedures do not meet
14 federal standards and even if they are not “plain, speedy, and effective.” Porter, *supra*, 534 U.S.
15 at 524 (*quoting* Booth, *supra*, 532 U.S. at 739 n. 5).

16 Plaintiff’s cryptic reference to “not meeting time restraints in error” does not obviate the
17 exhaustion requirement. Plaintiff had fifteen days after the order locking down Black prisoners
18 was issued on January 11, 2009, to file an administrative appeal. 15 Cal. Admin. Code §
19 3084.6(a). When Plaintiff completed his federal complaint on January 22, 2009, four days
20 remained in which he could file his prison grievance. Since Plaintiff concedes that he did not
21 pursue his administrative remedies, there is no basis to infer that Plaintiff contends that prison
22 officials failed to meet time constraints.

23 **III. Conclusion and Recommendation**

24 Although the PLRA requires plaintiffs to exhaust administrative remedies before filing
25 suit, Plaintiff concedes that he failed to do so. Further, neither Plaintiff’s constitutional
26 objections to the prison grievance process nor his pursuit of injunctive relief excuse Plaintiff
27 from the exhaustion requirement. Accordingly, the Court HEREBY RECOMMENDS dismissal
28 of this action, without prejudice, for failure to exhaust prior to filing suit. 42 U.S.C. § 1997e(a).

