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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALLEN B. WILLIAMS,

Plaintiff,

vs.

MATTHEW CATE, et al.,

Defendants.

Case No. 1:09-cv-00468 OWW JLT (PC)

ORDER REGARDING FINDINGS AND
RECOMMENDATIONS

(Doc. 63)

_____ /

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On February 8, 2011, the assigned magistrate judge issued findings and recommendations recommending that Defendants’ June 22, 2010 motion to dismiss for Plaintiff’s failure to exhaust administrative remedies be granted in part and denied in part. (Doc. 63.) Specifically, the assigned magistrate judge recommended that Plaintiff’s claims regarding the denial of dietary accommodations for the “Feast of Passover/Unleavened Bread” and the denial of kosher meals be dismissed because Plaintiff did not dispute that his inmate appeals regarding those claims were never decided at the final level of review, nor were they improperly screened as to render administrative remedies “unavailable.” As to Plaintiff’s equal protection claims, however, the assigned magistrate judge found that Appeal #KVSP-O-02254 was improperly screened-out repeatedly, thereby rendering administrative remedies

1 “unavailable.” Accordingly, the assigned magistrate judge concluded that Plaintiff should be excused
2 from his failure to exhaust and allowed to proceed on his equal protection claims against Defendants
3 Wegman, Gonzales, Howard, and Ortiz.

4 On February 22, 2011, Plaintiff filed timely objections to the findings and recommendations.
5 (Doc. 68.) Therein, Plaintiff argues that in addition to the inmate appeals analyzed by the assigned
6 magistrate judge in the findings and recommendations, Plaintiff filed other grievances in which he
7 complained that he was being denied kosher meals. Plaintiff contends that he was nevertheless
8 prevented from exhausting these grievances because they were screened-out for improper reasons by the
9 appeals coordinator at Kern Valley State Prison (“KVSP”).

10 In accordance with 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, the Court has conducted a de
11 novo review of this case. Having carefully reviewed the entire file, including Plaintiff’s objections to
12 the findings and recommendations, the Court adopts the findings and recommendation with respect to
13 (1) the dismissal of Plaintiff’s First Amendment and RLUIPA claims regarding the denial of dietary
14 accommodations for the “Feast of Passover/Unleavened Bread” for failure to exhaust administrative
15 remedies; and (2) allowing Plaintiff to proceed with his equal protection claims against Defendants
16 Wegman, Gonzales, Howard, and Ortiz. However, for the reasons set forth below, the Court declines
17 to adopt the recommendation that Plaintiff’s First Amendment and RLUIPA claims regarding the denial
18 of kosher meals be dismissed for failure to exhaust administrative remedies.

19 Section 1997e(a) of the Prison Litigation Reform Act (“PLRA”) provides that “[n]o action shall
20 be brought with respect to prison conditions under section 1983 of this title, or any other Federal law,
21 by a prisoner confined in any jail, or other correctional facility until such administrative remedies as are
22 available are exhausted.” 42 U.S.C. § 1997e(a). Prisoners are thus required to exhaust all available
23 administrative remedies prior to filing suit. Jones v. Bock, 549 U.S. 199, 211 (2007). Exhaustion of
24 administrative remedies is mandatory regardless of the relief offered by the process, Booth v. Churner,
25 532 U.S. 731, 741 (2001), and applies to all prisoner suits relating to prison life. Porter v. Nussle, 534
26 U.S. 516, 532 (2002).

27 In order to properly exhaust administrative remedies, an inmate must comply with the prison’s
28 deadlines and other critical procedural rules. Woodford v. Ngo, 548 U.S. 81, 93 (2006). In California,

1 the Department of Corrections and Rehabilitation has established an administrative grievance system
2 for prisoner complaints. See Cal. Code Regs, tit. 15 § 3084.1 (West 2011). Prisoners may appeal any
3 departmental decision, action, condition or policy perceived by those individuals as adversely affecting
4 their welfare. Id. at § 3084.1(a). The process is initiated by a prisoner submitting a CDCR Form 602,
5 which is also known as an “inmate appeal.” Id. at § 3084.2(a). The inmate appeal typically proceeds
6 through four levels of review: an informal level, the first formal level, the second formal level, and the
7 third formal level, also known as the “Director’s Level.” Id. at § 3084.7. A final decision from the
8 Director’s Level of review typically satisfies the exhaustion requirement under § 1997e(a). See, e.g.,
9 Barry v. Ratelle, 985 F. Supp. 1235, 1237-38 (S.D. Cal 1997).

10 Nevertheless, the PLRA only requires an inmate to exhaust administrative remedies that “are
11 available.” 42 U.S.C. § 1997e(a). When circumstances render administrative remedies “effectively
12 unavailable” an inmate is excused from the exhaustion requirement. See Nunez v. Duncan, 591 F.3d
13 1217, 1226 (9th Cir. 2010). For example in Nunez, the Ninth Circuit held that a prisoner’s failure to
14 exhaust may be excused when the prisoner takes “reasonable and appropriate steps to exhaust . . . [but
15 is] precluded from exhausting, not through his own fault but by [a prison official’s] mistake.” Id. at
16 1224. In other words, a prisoner cannot be faulted when he makes “every effort to make full use of the
17 prison grievance process, but [is] stymied by the error” of prison officials. Id. at 1226. See also Ngo
18 v. Woodford, 539 F.3d 1108, 1110 (9th Cir. 2008) (suggesting that a prisoner may be excused from his
19 failure to exhaust when prison officials obstruct the grievance process).

20 In this case, Plaintiff has provided evidence of an inmate appeal regarding the denial of kosher
21 meals that Plaintiff attempted to exhaust through the grievance process. (Doc. 55 at 66.) Specifically,
22 on November 10, 2005, Plaintiff filed an inmate appeal requesting that he be provided kosher meals or
23 transferred to a facility that was able to accommodate his religious dietary needs. (Id.) The appeal was
24 denied at the informal level of review on December 22, 2005. (Id.) In response, Plaintiff resubmitted
25 the appeal for consideration at the first level of review on January 7, 2006. (Id.) However, according
26 to Plaintiff, the appeal was returned to him without ever being processed. (Id.) Plaintiff therefore has
27 raised a factual question as to whether he was thwarted from exhausting his grievance because prison
28 officials erred and failed to process the appeal.

