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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JAMES E. BRYANT,

Plaintiff,

v.

J. KNIGHT, et al.,

Defendants.

CASE NO. 1:09-CV-01367-DLB PC

ORDER GRANTING DEFENDANTS’
MOTION TO DISMISS AND DISMISSING
CERTAIN CLAIMS WITHOUT PREJUDICE
(DOC. 51)

ORDER DENYING PLAINTIFF’S MOTION
FOR SANCTIONS (DOC. 40)

Order

I. Background

Plaintiff James E. Bryant (“Plaintiff”) is a prisoner in the custody of the California Department of Corrections and Rehabilitation (“CDCR”). Plaintiff is proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on Plaintiff’s complaint, filed August 5, 2009, against Defendants J. Knight and Davis (“Defendants”) for retaliation in violation of the First Amendment and excessive force in violation of the Eighth Amendment. Pending before the Court is Defendants’ motion to dismiss certain claims for failure to exhaust administrative remedies, filed August 31, 2011. Defs.’ Mot. Dismiss, Doc. 51. On October 18, 2011, Plaintiff filed a document, indicating that he had addressed the issue of exhaustion in a prior filing on August 19, 2011. Docs. 47, 57. The Court will construe the August 19, 2011 as an opposition.¹ On October 20, 2011, Defendants’ filed a

¹ Plaintiff was provided with notice of the requirements for opposing an unenumerated Rule 12(b) motion on November 24, 2009. *Wyatt v. Terhune*, 315 F.3d 1108, 1120 n.14 (9th Cir. 2003); *see* Second Informational Order, Doc. 12.

1 document construed as their reply. Doc. 58.

2 On June 22, 2011, Plaintiff filed a motion for monetary sanctions against Defendants.
3 Doc. 40. Defendants filed their opposition on August 26, 2011. Doc. 49. Plaintiff filed a reply
4 on August 19, 2011. Doc. 47. The matter is submitted pursuant to Local Rule 230(l). The Court
5 will first address the motion to dismiss.

6 **II. Summary Of Complaint**

7 Plaintiff was incarcerated at California Substance Abuse Treatment Facility (“SATF”) in
8 Corcoran, California. On December 20, 2007, Defendant J. Knight had the yard control booth
9 officer order the Plaintiff to go from the back of the medication line to the front. The weather
10 was very cold, and the other inmates would not appreciate Plaintiff skipping ahead of them.
11 Defendant Knight then told Plaintiff that he could either go to the front of the line as ordered, go
12 back to the unit without breakfast, or go to the holding cage. Plaintiff chose the holding cage.
13 Plaintiff headed to the program office and informed Lieutenant Baires that Defendant Knight had
14 ordered Plaintiff to report to the cage. Defendant Knight then arrived, asked what Plaintiff was
15 doing, and then shoved him against the wall and ordered Plaintiff to turn around. Plaintiff
16 complied. Defendant Knight then, without any provocation, placed Plaintiff in a hammer
17 headlock and began choking him sadistically and maliciously. Defendant Knight lifted him off
18 the ground and placed him in the holding cage. Plaintiff subsequently filed inmate grievances
19 against both Defendants.

20 On December 2008, Defendant Davis, Plaintiff’s work supervisor, refused to allow
21 Plaintiff to come to work in retaliation for Plaintiff filing a complaint against him. On January
22 24, 2009, Defendants Knight and Davis put another inmate up to viciously assault Plaintiff in
23 retaliation for Plaintiff filing inmate grievances against them.

24 Plaintiff alleges a violation of the Eighth Amendment and the state law claim of
25 negligence. Plaintiff requests as relief monetary damages.

26 **III. Exhaustion Of Administrative Remedies**

27 **A. Legal Standard**

28 Pursuant to the Prison Litigation Reform Act of 1995, “[n]o action shall be brought with

1 respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner
2 confined in any jail, prison, or other correctional facility until such administrative remedies as are
3 available are exhausted.” 42 U.S.C. § 1997e(a). Prisoners are required to exhaust the available
4 administrative remedies prior to filing suit. *Jones v. Bock*, 549 U.S. 199, 211 (2007); *McKinney*
5 *v. Carey*, 311 F.3d 1198, 1199-1201 (9th Cir. 2002) (per curiam). Exhaustion is required
6 regardless of the relief sought by the prisoner and regardless of the relief offered by the process,
7 *Booth v. Churner*, 532 U.S. 731, 741 (2001), and the exhaustion requirement applies to all
8 prisoner suits relating to prison life, *Porter v. Nussle*, 435 U.S. 516, 532 (2002).

9 Section 1997e(a) does not impose a pleading requirement, but rather, is an affirmative
10 defense under which defendants have the burden of raising and proving the absence of
11 exhaustion. *Jones*, 549 U.S. at 216; *Wyatt*, 315 F.3d at 1119. The failure to exhaust nonjudicial
12 administrative remedies that are not jurisdictional is subject to an unenumerated Rule 12(b)
13 motion, rather than a summary judgment motion. *Wyatt*, 315 F.3d at 1119 (citing *Ritza v. Int’l*
14 *Longshoremen’s & Warehousemen’s Union*, 837 F.2d 365, 368 (9th Cir. 1998) (per curiam)). In
15 deciding a motion to dismiss for failure to exhaust administrative remedies, the Court may look
16 beyond the pleadings and decide disputed issues of fact. *Id.* at 1119-20. If the Court concludes
17 that the prisoner has failed to exhaust administrative remedies, the proper remedy is dismissal
18 without prejudice. *Id.*

19 **B. Discussion**

20 The CDCR has an administrative grievance system for prisoner complaints. Cal. Code
21 Regs. tit. 15, § 3084.1 (2010). The process is initiated by submitting a CDC Form 602. *Id.* §
22 3084.2(a). Four levels of appeal are involved, including the informal level, first formal level,
23 second formal level, and third formal level, also known as the “Director’s Level.” *Id.* § 3084.5.
24 Appeals must be submitted within fifteen working days of the event being appealed, and the
25 process is initiated by submission of the appeal to the informal level, or in some circumstances,
26 the first formal level. *Id.* §§ 3084.5, 3084.6(c). In order to satisfy § 1997e(a), California state
27 prisoners are required to use this process to exhaust their claims prior to filing suit. *Woodford v.*
28 *Ngo*, 548 U.S. 81, 85-86 (2006); *McKinney*, 311 F.3d at 1199-1201. Exhaustion does not *always*

1 require pursuit of an appeal through the Director’s Level of Review. What is required to satisfy
2 exhaustion is a fact specific inquiry, and may be dependent upon prison officials’ response to the
3 appeal. *See Sapp v. Kimbrell*, 623 F.3d 813, 823 (9th Cir. 2010) (improper reasons for screening
4 inmate’s appeal is equitable exception to exhaustion); *Nunez v. Duncan*, 591 F.3d 1217, 1224
5 (9th Cir. 2010) (listing examples of exceptions to exhaustion requirement from other circuits);
6 *Brown v. Valoff*, 422 F.3d 926, 935-36 (9th Cir. 2005) (“[E]ntirely pointless exhaustion” not
7 required).

8 Defendants contend that there are no grievances addressing Plaintiff’s retaliation claims,
9 and thus, he failed to exhaust administrative remedies. Defs.’ Mem. P. & A. 2:14-22.

10 Defendants submit as exhibits in support a declaration from D. Foston, Chief of the Office of
11 Appeals for CDCR, and a declaration from R. Gomez, appeals coordinator at SATF. D. Foston
12 Decl.; R. Gomez Decl. Gomez declares that Plaintiff has not filed any inmate grievances
13 concerning alleged retaliation in 2007 or 2008 at SATF. Gomez Decl. ¶ 6. Defendants have met
14 their initial burden of proving the absence of exhaustion, and the burden shifts to Plaintiff to
15 demonstrate exhaustion or an exception to exhaustion.

16 Plaintiff’s opposition cites only a previously submitted document, Plaintiff’s reply to
17 Defendant’s opposition to Plaintiff’s motion for monetary sanctions, filed August 19, 2011. Doc.
18 47. In this document, Plaintiff includes a 602 inmate grievance filed at Los Angeles County
19 State Prison on February 25, 2011. Pl.’s Reply, Ex. A. This grievance clearly does not exhaust
20 administrative remedies as to any claims in this action.²

21 Plaintiff has failed to oppose Defendants’ motion to dismiss for failure to exhaust
22 administrative remedies as to Plaintiff’s retaliation claims. Accordingly, the Court will dismiss
23 all the retaliation claims from this action. As the only claims against Defendant Davis were for
24 retaliation, Defendant Davis will be dismissed from this action.

26 ² Plaintiff’s motion for sanctions also cites to Plaintiff’s exhibits A, E, and F from
27 Plaintiff’s complaint as proof of exhaustion. Pl.’s Compl., Exs. A, E, F, Doc. 1. Those exhibits,
28 however, demonstrate only that Plaintiff exhausted administrative remedies as to his claim for
excessive force against Defendant Knight.

1 **IV. Motion For Sanctions**

2 Plaintiff moves this Court to sanction Defendants for a lie allegedly provided in their
3 answer to Plaintiff’s complaint. Pl.’s Mot., Doc. 40. Plaintiff appears to contend that he has
4 exhausted administrative remedies as to at least some of his claims. Thus, Plaintiff contends,
5 Defendants’ denial of Plaintiff’s allegations that he had exhausted administrative remedies, and
6 the affirmative defense that Plaintiff failed to exhaust administrative remedies is a lie and
7 sanctionable under Rule 11 of the Federal Rules of Civil Procedure. *See* Defs.’ Answer 3:1-3, 16-
8 17, Doc. 37.

9 Defendants contend that they did not a lie, because Plaintiff has actually failed to exhaust
10 administrative remedies as to several of his claims. Defs.’ Opp’n, Doc. 49. Defendants concede
11 that Plaintiff has exhausted administrative remedies only as to his claim against Defendant
12 Knight for putting Plaintiff in a headlock and choking Plaintiff, in violation of the Eighth
13 Amendment.

14 Under Rule 8 of the Federal Rules of Civil Procedure, “[a] party that lacks knowledge or
15 information sufficient to form a belief about the truth of an allegation must so state, and the
16 statement has the effect of a denial,” Fed. R. Civ. P. 8(b)(5), and “a party must affirmatively
17 state any avoidance or affirmative defense.” *Id.* 8(c)(1). Under Rule 11 of the Federal Rules of
18 Civil Procedure, by presenting any pleading to the court,

- 19 an attorney or unrepresented party certifies that to the best of the person's
20 knowledge, information, and belief, formed after an inquiry reasonable under the
21 circumstances: . . .
22 (2) the claims, defenses, and other legal contentions are warranted by existing law;
23 . . .
24 (4) the denials of factual contentions are warranted on the evidence or, if
25 specifically so identified, are reasonably based on belief or a lack of information.

26 Fed. R. Civ. P. 11(b). Here, there is no evidence that Defendants’ answer was not warranted
27 under existing law, nor evidence that the denial of factual contentions was not reasonably based
28 on a lack of information. Plaintiff did not exhaust administrative remedies as to his retaliation
claims, and there is no evidence that at the time the Defendants submitted their answer that
Defendants possessed information as to whether Plaintiff had exhausted his administrative
remedies as to his claims. Additionally, Defendants are required only to “affirmatively state” an

1 affirmative defense, not necessarily present all facts in support of their defense.

2 There is no evidence that Plaintiff has complied with Rule 11(c) of Federal Rules of Civil
3 Procedure. Pursuant to Rule 11(c)(2), a motion for sanctions must “not be filed or be presented
4 to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or
5 appropriately corrected within 21 days after service or within another time the court sets.” This
6 is known as the “safe harbor” requirement, and is mandatory for a motion for sanctions pursuant
7 to Rule 11(c)(2). *See Radcliffe v. Rainbow Constr. Co.*, 254 F.3d 772, 789 (9th Cir. 2001).
8 Plaintiff contends compliance with the safe harbor requirement in his motion, but provides no
9 evidence. The moving party is required to give twenty-one day advance notice of intent to file
10 the Rule 11(c) motion by serving the motion on the non-moving party prior to filing the motion
11 with the court. *Id.*

12 Accordingly, Plaintiff’s motion for sanctions pursuant to Rule 11 of the Federal Rules of
13 Civil Procedure, filed June 22, 2011, should be denied.

14 **V. Conclusion And Order**

15 Based on the foregoing, it is HEREBY ORDERED that:

- 16 1. Defendants’ motion to dismiss, filed August 31, 2011, is GRANTED;
- 17 2. Plaintiff’s retaliation claims are dismissed without prejudice for failure to exhaust
18 administrative remedies pursuant to 42 U.S.C. § 1997e(a);
- 19 3. Defendant Davis is dismissed from this action; and
- 20 4. Plaintiff’s motion for sanctions, filed June 22, 2011, is denied.

21 IT IS SO ORDERED.

22 **Dated: January 23, 2012** /s/ Dennis L. Beck
23 UNITED STATES MAGISTRATE JUDGE
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