

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JAMES CATO, JR.,

Plaintiff,

v.

T. AVILA, et al.,

Defendants.

CASE NO. 1:10-cv-00793-MJS (PC)

ORDER DENYING DEFENDANTS'
MOTION TO DISMISS

(ECF No. 19)

Plaintiff James Cato, Jr. ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

Plaintiff began this action by filing his Complaint on May 5, 2010. (ECF No. 1.) He filed consent to Magistrate Judge jurisdiction on May 17, 2010. (ECF No. 5.) The Court screened Plaintiff's Complaint on March 1, 2011, and found that Plaintiff stated a cognizable claim against Defendants Avila, Kavanaugh, Dumont, Rodriguez, Patrick, England, Bueno, Patterson, and Johnson for excessive force in violation of the Eighth Amendment. (ECF No. 11) Plaintiff submitted the required service documents for these Defendants and the United States Marshall effectuated service. (ECF Nos. 14 & 15.)

In lieu of an answer, Defendants Avila, Kavanaugh, Dumont, Rodriguez, Patrick,

1 England, Bueno, Patterson, and Johnson filed a Motion to Dismiss on the ground that
2 Plaintiff had failed to exhaust his administrative remedies pursuant to 42 U.S.C. §
3 1997e(a). (ECF No. 19.) Plaintiff has filed an Opposition to the Motion to Dismiss
4 (Opp., ECF No. 21), and Defendants filed a Reply (Reply, ECF No. 23). The Motion to
5 Dismiss is now ready for ruling.

6 **I. LEGAL STANDARD**

7 The Prison Litigation Reform Act (“PLRA”) stipulates, “No action shall be brought
8 with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by
9 a prisoner confined in any jail, prison, or other correctional facility until such
10 administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a).
11 Therefore, prisoners are required to exhaust all available administrative remedies prior
12 to filing suit. Jones v. Bock, 549 U.S. 199, 211 (2007). The Supreme Court held that
13 “the PLRA’s exhaustion requirement applies to all inmate suits about prison life,
14 whether they involve general circumstances or particular episodes, and whether they
15 allege excessive force or some other wrong.” Porter v. Nussle, 534 U.S. 516, 532
16 (2002). Further, the exhaustion of remedies is required, regardless of the relief sought
17 by the prisoner, as long as the administrative process can provide some sort of relief on
18 the prisoner’s complaint. Booth v. Churner, 532 U.S. 731, 741 (2001).

19 The California Department of Corrections and Rehabilitation (“CDCR”)
20 established an administrative system for prisoner’s grievances. See Cal.Code Regs.,
21 tit. 15 § 3084, et seq. To properly exhaust the administrative remedies, a prisoner must
22 comply with the deadlines and other applicable procedural rules. Woodford v. Ngo, 548
23 U.S. 81, 93 (2006).

24 The exhaustion requirement of § 1997e(a) does not impose a pleading
25 requirement, but rather is an affirmative defense under which defendants have the
26 burden of proving the plaintiff failed to exhaust the available administrative remedies
27 before filing a complaint in the District Court. Jones v. Bock, 549 U.S. 199, 216 (2007).
28 A motion raising a prisoner’s failure to exhaust the administrative remedies is properly

1 asserted by way of an unenumerated motion under Fed.R.Civ.P 12(b). Wyatt v.
2 Terhune, 315 F.3d 1108, 1119 (9th Cir. 2003); Ritza v. Int'l Longshoremen's &
3 Warehousemen's Union, 837 F.2d 365, 368 (9th Cir. 1998) (per curium). In
4 determining whether a case should be dismissed for failure to exhaust the
5 administrative remedies, “the court may look beyond the pleadings and decide disputed
6 issues of fact” in a procedure that is “closely analogous to summary judgment.” Id. at
7 1119–20. When the court concludes the prisoner has not exhausted all of his available
8 administrative remedies, “the proper remedy is dismissal without prejudice.” Id.

9 **II. ANALYSIS**

10 Defendants move for dismissal pursuant to 42 U.S.C. § 1997e(a). Defendants
11 argue that Plaintiff’s Complaint should be dismissed because Plaintiff failed to exhaust
12 his administrative remedies as required by the PLRA.

13 According to Defendants, Plaintiff “filed four grievances relevant to this lawsuit.
14 The first two, log nos., COR-05-04597 and COR-05-04834, were denied at the first level
15 of review and [Plaintiff] did not pursue the matter further.” (Mot. at 4.) Also according
16 to Defendants, Plaintiff’s other two grievances were screened out as untimely. (Id.)

17 Plaintiff asserts that his Complaint is not barred under the PLRA. Plaintiff
18 opposes the Motion on the grounds that there is newly discovered evidence that
19 indicates that he exhausted his administrative remedies, that appeal log COR-05-4597
20 was completed and the requested relief was given, and that the appeals that he
21 submitted were timely pursuant to the California Code of Regulations. (Pl. Opp. at 3-7.)

22 The Court need not address Plaintiff’s first and third arguments in opposition to
23 Defendants’ Motion at this time as analysis of Plaintiff’s second argument regarding log
24 no. COR-05-4597 will be dispositive of this motion. Log no. COR-05-4597 was
25 Plaintiff’s first grievance, and it encompasses all of Plaintiff’s claims and allegations. If
26 Plaintiff satisfied his obligations under the PLRA for this one grievance, he will have
27 sufficiently exhausted his administrative remedies for his claims and allegations.

28 Log. No. COR-05-4597 appears to be the primary grievance giving rise to this

1 lawsuit. It was the first grievance filed after the underlying incident and it describes the
2 incident and Plaintiff's requested relief in detail. (Campbell Decl. Ex. A.) Log No. COR-
3 05-4597 was denied, but after denying the grievance, it states, "[a]lso, based on the
4 fact-finding investigation, I have concluded my finding that your allegations are
5 exonerated." (Id. at 4.) Plaintiff argues that this language means that his grievance
6 was granted and additional appeal was unnecessary. (Pl. Opp. at 5-6.) Defendants do
7 not provide any explanation for the language

8 A prisoner's failure to exhaust may be excused where an inmate takes
9 "reasonable and appropriate steps to exhaust [a] claim," but is precluded from doing so
10 by the mistake or misconduct of a prison official. Nunez v. Duncan, 591 F.3d 1217,
11 1224–25 (9th Cir. 2010); see also Ngo v. Woodford, 539 F.3d 1108, 1110 (9th Cir.
12 2008) (suggesting a prisoner is excused from the exhaustion requirement when "prison
13 officials obstruct[] his attempts to exhaust" or "procedures for processing grievances
14 weren't followed by prison officials"). In Nunez, the plaintiff took various steps to
15 exhaust the administrative remedies, including filing both formal and informal appeals,
16 and "made every effort to make full use of the prison grievance process, but was
17 stymied by the mistake." Id. at 1224, 1226. In Sapp, another case where a plaintiff was
18 frustrated from exhausting the administrative remedies, the court held that "improper
19 screening of an inmate's administrative grievances renders administrative remedies
20 'effectively unavailable' such that exhaustion is not required under the PLRA." Sapp v.
21 Kimbrell, 623 F.3d 813, 822 (9th Cir. 2010).

22 Here, Plaintiff was frustrated from exhausting his administrative remedies
23 because the decision in log No. COR-05-4597 allegedly, and understandably, led him to
24 believe his appeal was granted and that no further action was required on his part
25 under the PLRA. Given this frustration of his courses of review, PLRA exhaustion is
26 excused. Sapp, 623 F.3d at 822. Defendants, having chosen not to address the
27 conflicting language, have not carried their burden of demonstrating an unexcused
28 failure to exhaust administrative remedies. Id. Defendants' Motion to Dismiss must be

1 denied.

2 **III. ORDER**

3 _____Accordingly, Defendants Avila, Kavanaugh, Dumont, Rodriguez, Patrick,
4 England, Bueno, Patterson, and Johnson's Motion to Dismiss is denied.

5

6 IT IS SO ORDERED.

7 Dated: November 16, 2011

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28