

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ALVARO QUEZADA,

1:10-cv-01402-AWI-GBC (PC)

Plaintiff,

ORDER TO SHOW CAUSE REGARDING
EXHAUSTION

v.

(Doc. 1)

R. LINDSEY, et al.,

Defendants.

I. Factual and Procedural Background

Alvaro Quezada ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. On August 5, 2010, Plaintiff filed his original complaint. On page three of the form complaint, Plaintiff asserts that the Appeal's Coordinator has purposefully obstructed Plaintiff's ability to exhaust administrative remedies and placed Plaintiff's appeal "in limbo." (Doc. 1 at 3). Plaintiff directs the Court to attachments of the complaint to explain why his administrative remedies have not been exhausted. (Doc. 1 at 3). Attached to Plaintiff's complaint, on page 29, there is a letter dated February 6, 2009, from the Appeals Coordinator stating that Plaintiff failed to timely submit the appeal as per Rule CCR 3084.6(c). (Doc. 1 at 29).

II. Exhaustion Requirement

Pursuant to the Prison Litigation Reform Act of 1995, "[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

1 confined in any jail, prison, or other correctional facility until such administrative remedies as are
2 available are exhausted." 42 U.S.C. § 1997e(a). Prisoners are required to exhaust the available
3 administrative remedies prior to filing suit. *Jones v. Bock*, 127 S.Ct. 910, 918-19 (2007); *McKinney*
4 *v. Carey*, 311 F.3d 1198, 1199-1201 (9th Cir. 2002). The Court must dismiss a case without
5 prejudice even when there is exhaustion while the suit is pending. *Lira v. Herrera*, 427 F.3d 1164,
6 1170 (9th Cir. 2005).

7 Exhaustion is required regardless of the relief sought by the prisoner. *Booth v. Churner*, 532
8 U.S. 731, 741, 121 S.Ct. 1819 (2001). A prisoner must "must use all steps the prison holds out,
9 enabling the prison to reach the merits of the issue." *Griffin v. Arpaio*, 557 F.3d 1117, 1119 (9th Cir.
10 2009); *see also Brown v. Valoff*, 422 F.3d 926, 935 (9th Cir. 2005). A prisoner's concession to
11 non-exhaustion is valid grounds for dismissal so long as no exception to exhaustion applies. 42
12 U.S.C. § 1997e(a); *Wyatt v. Terhune*, 315 F.3d 1108, 1120 (9th Cir. 2003).

13 The Court takes judicial notice of the fact that the California Department of Corrections and
14 Rehabilitation has an administrative grievance system for prisoner complaints. Cal. Code Regs., tit.
15 15 § 3084.1 (2008). The process is initiated by submitting a CDC Form 602. *Id.* at § 3084.2(a).
16 Four levels of appeal are involved, including the informal level, first formal level, second formal
17 level, and third formal level, also known as the "Director's Level." *Id.* at § 3084.5. Appeals must
18 be submitted within fifteen working days of the event being appealed, and the process is initiated by
19 submission of the appeal to the informal level, or in some circumstances, the first formal level. *Id.*
20 at §§ 3084.5, 3084.6(c). Where a prisoner asks for accommodation for an ADA disability, the filing
21 of the "request for accommodation form" along with completion of the appeal process thereafter
22 satisfies PLRA exhaustion. *Butler v. Adams*, 397 F.3d 1181 (9th Cir.2005).

23 In order to satisfy section 1997e(a), California state prisoners are required to use the available
24 process to exhaust their claims prior to filing suit. *Woodford v. Ngo*, 548 U.S. 81, 126 S.Ct. 2378,
25 2383 (2006); *McKinney*, 311 F.3d at 1199-1201. "[E]xhaustion is mandatory under the PLRA and
26 . . . unexhausted claims cannot be brought in court." *Jones*, 127 S.Ct. at 918-19 (citing *Porter*, 435
27 U.S. at 524). "All 'available' remedies must now be exhausted; those remedies need not meet
28 federal standards, nor must they be 'plain, speedy, and effective.'" *Porter*, 534 U.S. at 524 (quoting

1 *Booth*, 532 U.S. at 739 n.5).

2 The Court may review exhibits attached to the complaint that may contradict Plaintiff's
3 assertions in the complaint. *Tyler v. Cuomo*, 236 F.3d 1124, 1131 (9th Cir. 2000); *Durning v. First*
4 *Boston Corp.*, 815 F.2d 1265, 1267 (9th Cir. 1987). Attached to Plaintiff's complaint, is a letter
5 dated February 6, 2009, from the Appeals Coordinator at Kern Valley State Prison which states that:

6 There has been too great a TIME LAPSE between when the action or decision
7 occurred and when you filed your appeal with no explanation of why you did not or
8 could not file in a timely fashion. Time limits expired per CCR 3084.6(c).
Therefore, if you would like to pursue this matter further, you must submit an
explanation and supporting documentation explaining why you did not or could not
file your appeal timely.

9 (Doc. 1 at 29). The Supreme Court has held that the exhaustion requirement demands "proper"
10 exhaustion. *Woodford v. Ngo*, 548 U.S. 81, 84, 90-91 (2006). "To 'proper[ly]' exhaust, a prisoner
11 must comply 'with an agency's deadlines and other critical procedural rules because no adjudicative
12 system can function effectively without imposing some orderly structure on the course of its
13 proceedings.'" *Sapp v. Kimbrell*, 623 F.3d 813, 821 (9th Cir. 2010) (quoting *Woodford v. Ngo*, 548
14 U.S. 81, 90-91).¹

15 In this instance, Plaintiff was given the opportunity to correct the error or seek reversal of the
16 screening result after receiving the screening notice. Plaintiff does not attach any documentation that
17 would demonstrate that he attempted to address the shortcomings highlighted in the administrative
18 screening notice. Since Plaintiff has failed to comply with the agency's procedural requirements,
19 Plaintiff has not properly exhausted his administrative remedies. *See Woodford v. Ngo*, 548 U.S. 81,
20 84, 90-91.

21 22 **III. Conclusion and Order**

23 Because it appears that Plaintiff has not completed the grievance process, the Court
24 HEREBY ORDERS:

- 25 1. Plaintiff SHALL SHOW CAUSE why the action should not be dismissed for
26

27 ¹ The Court also takes judicial notice of another case by the same Plaintiff (*Quezada v. Gricewich*,
28 1:06-cv-01088-OWW-GBC (PC)) wherein the Court recommended dismissal due to Plaintiff's failure to follow
directions in order to properly exhaust administrative remedies. *Quezada v. Gricewich*, 1:06-cv-01088 at Doc. 68.

1 failure to exhaust administrative remedies withing thirty (30) days of the date of
2 service of this order.

3
4 IT IS SO ORDERED.

5 Dated: May 2, 2011

6 
UNITED STATES MAGISTRATE JUDGE