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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CARL ETHRIDGE,
Plaintiff,
v.
S. CHILDS, et al.,
Defendants.

Case No. 1:10-cv-1962-LJO-MJS (PC)

**FINDINGS AND RECOMMENDATIONS
TO GRANT DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT**

(ECF No. 31)

**FOURTEEN (14) DAY OBJECTION
DEADLINE**

I. PROCEDURAL HISTORY

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 28 U.S.C. § 1983. (ECF Nos. 6 & 7.) This action proceeds against Defendants Hernandez and Childs on Plaintiff's Eighth Amendment conditions of confinement claim. (ECF Nos. 18 & 19.)

Before the Court is Defendants' May 19, 2014 motion for summary judgment. (ECF No. 31.) Plaintiff opposes the motion (ECF No. 34), and Defendants have filed a reply (ECF No. 35). This matter is deemed submitted.

II. LEGAL STANDARD

Any party may move for summary judgment, and the Court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact

1 and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); Wash.
2 Mut. Inc. v. United States, 636 F.3d 1207, 1216 (9th Cir. 2011). Each party’s position,
3 whether it be that a fact is disputed or undisputed, must be supported by (1) citing to
4 particular parts of materials in the record, including but not limited to depositions,
5 documents, declarations, or discovery; or (2) showing that the materials cited do not
6 establish the presence or absence of a genuine dispute or that the opposing party
7 cannot produce admissible evidence to support the fact. Fed R. Civ. P. 56(c)(1).

8 In judging the evidence at the summary judgment stage, the Court may not make
9 credibility determinations or weigh conflicting evidence, Soremekun v. Thrifty Payless,
10 Inc., 509 F.3d 978, 984 (9th Cir. 2007), and it must draw all inferences in the light most
11 favorable to the nonmoving party, Comite de Jornaleros de Redondo Beach v. City of
12 Redondo Beach, 657 F.3d 936, 942 (9th Cir. 2011).

13 **III. FACTUAL SUMMARY**

14 Based on the submissions of the parties (ECF Nos. 31, 32, & 34), the Court finds
15 that the following facts are undisputed.

16 Plaintiff complains of acts that occurred during his incarceration at the Substance
17 Abuse Treatment Facility (SATF), where he was housed from July 2008 through
18 September 2012. (ECF No. 17, No. 32 at 1.) Plaintiff claims that, while at SATF,
19 Defendants Hernandez and Childs denied Plaintiff out-of-cell exercise for a period of
20 180 days in violation of the Eighth Amendment. (ECF Nos. 18 & 19.) The deprivation of
21 exercise allegedly was imposed in relation to Plaintiff being found guilty on two Rules
22 Violation Reports (“RVRs”). The first RVR was issued on December 28, 2009, for
23 possession of inmate manufactured alcohol. The second RVR was issued on December
24 30, 2009, also for possession of inmate manufactured alcohol.

25 Plaintiff filed two appeals regarding the RVRs, log numbers SATF-10-00361 and
26 SATF-10-00524. (ECF No. 34 at 3-6.) Both appeals alleged that the processing of the
27 RVRs violated Plaintiff’s due process rights, and that the privilege restrictions imposed
28 were excessive. Plaintiff pursued both appeals to the Director’s Level of Review. (Id.)

1 Plaintiff filed a separate appeal, log number SATF-E-10-1773, regarding the
2 denial of adequate exercise. (ECF No. 32-7.) The appeal was denied at the first level of
3 review. (ECF No. 32-8.) Plaintiff attempted to pursue his appeal to the second level of
4 review, but the appeal was returned to Plaintiff as incomplete. Plaintiff was advised of
5 the specific documents that were required and the process for obtaining copies. (ECF
6 No. 32-9.) Thereafter, the appeal was “cancelled.” (ECF No. 32-10 at 6.)

7 **IV. ANALYSIS**

8 **A. Motion for Summary Judgment for Failure to Exhaust**

9 **1. Legal Standard – Exhaustion**

10 The Prison Litigation Reform Act (“PLRA”) stipulates, “No action shall be brought
11 with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by
12 a prisoner confined in any jail, prison, or other correctional facility until such
13 administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a).
14 Therefore, prisoners are required to exhaust all available administrative remedies prior
15 to filing suit. Jones v. Bock, 549 U.S. 199, 211 (2007).

16 “The primary purpose of a [prisoner’s administrative] grievance is to alert the
17 prison to a problem and facilitate its resolution, not to lay groundwork for litigation.”
18 Griffin v. Arpaio, 557 F.3d 1117, 1120 (9th Cir. 2009). “A grievance need not include
19 legal terminology or legal theories unless they are in some way needed to provide
20 notice of the harm being grieved. A grievance also need not contain every fact
21 necessary to prove each element of an eventual legal claim.” Id. Instead, the grievance
22 must “alert the prison to the nature of the wrong for which redress is sought,” and must
23 give the prison an opportunity “to reach the merits of the issue.” Id. at 1120-21.

24 A motion for summary judgment is the proper means to raise a prisoner's failure
25 to exhaust administrative remedies. Albino v. Baca, 747 F.3d 1162, 1166 (9th Cir.
26 2014). Defendants have the burden of proving Plaintiff failed to exhaust available
27 administrative remedies. See Jones, 549 U.S. at 216 (failure to exhaust is an affirmative
28 defense). A defendant's burden of establishing an inmate's failure to exhaust

1 administrative remedies has been characterized by the Ninth Circuit as “very low.”
2 Albino v. Baca, 697 F.3d 1023, 1031 (9th Cir. 2012). The defendant need only show the
3 existence of a grievance procedure the plaintiff did not use. Id. (citing Hilao v. Estate of
4 Marcos, 103 F.3d 767, 778 n.5 (9th Cir. 1996)).

5 “If undisputed evidence viewed in the light most favorable to the prisoner shows
6 a failure to exhaust, a defendant is entitled to summary judgment under Rule 56.”
7 Albino, 747 F.3d at 1166. If material facts are disputed, summary judgment should be
8 denied, and the district judge should decide disputed factual questions relevant to
9 exhaustion “in the same manner a judge rather than a jury decides disputed factual
10 questions relevant to jurisdiction and venue.” Id. at 1170-71.

11 **2. Parties’ Arguments**

12 Defendants argue that Plaintiff did not exhaust available administrative remedies
13 for seeking relief from alleged inadequate exercise. (ECF No. 31.) Plaintiff filed an
14 inmate appeal concerning this issue, but it was screened out at the second level of
15 review because Plaintiff did not include required documents. Plaintiff was advised which
16 documents were necessary but did not submit them, and the appeal was cancelled.

17 Plaintiff argues that he exhausted all administrative remedies. (ECF No. 34.) He
18 contends that he exhausted two inmate appeals regarding the RVRs that led to his loss
19 of privileges. He also exhausted the appeal regarding the denial of adequate exercise
20 by appealing the cancelled appeal to the Director’s Level of Review.

21 Defendants respond that the appeals regarding Plaintiff’s RVRs do not discuss
22 the allegation that Plaintiff was denied adequate exercise and therefore did not exhaust
23 the claim alleged in the instant case. (ECF No. 35.)

24 **3. Discussion**

25 The California Department of Corrections and Rehabilitation has an
26 administrative grievance system for prisoner complaints. Cal. Code Regs. tit. 15
27 § 3084.1. The process is initiated by submitting a CDCR Form 602. Id. at § 3084.2(a). It
28 is completed at the third level of review, also known as the Director’s Level of Review.

1 Id. at § 3084.7.

2 Exhaustion of administrative remedies under the PLRA requires that the prisoner
3 complete the administrative review process in accordance with the applicable
4 procedural rules. Woodford v. Ngo, 548 U.S. 81, 85 (2006); McKinney v. Carey, 311
5 F.3d 1198, 1199-1201 (9th Cir. 2002). An untimely or otherwise procedurally defective
6 appeal will not satisfy the exhaustion requirement. Woodford, 548 U.S. at 84.
7 Exhaustion does not always require pursuit of an appeal through the Director's Level of
8 Review. Whether a claim has been exhausted is a fact specific inquiry, and may depend
9 upon prison officials' response to the appeal. See Sapp v. Kimbrell, 623 F.3d 813, 823
10 (9th Cir. 2010) (improper screening of inmate's appeal renders administrative remedies
11 "effectively unavailable" such that exhaustion is not required); Nunez v. Duncan, 591
12 F.3d 1217, 1224 (9th Cir. 2010) (listing examples of exceptions to exhaustion
13 requirement from other circuits); Brown v. Valoff, 422 F.3d 926, 935-36 (9th Cir. 2005)
14 ("entirely pointless exhaustion" not required).

15 The materials provided by both Plaintiff and Defendants indicate that Plaintiff
16 failed to exhaust his administrative remedies. It is undisputed that Plaintiff initiated an
17 appeal with regard to the denial of adequate exercise. Defendants have submitted
18 Appeals Tracking System records that show that this appeal, log number SATF-E-10-
19 1773 was "cancelled" at the second level of review because Plaintiff did not submit
20 required documents. Plaintiff contends that he appealed the cancellation to the
21 Director's Level of Review. However, Plaintiff does not support this contention with
22 reference to declarations, depositions, answers to interrogatories, or authenticated
23 documents as required under Rule 56(c). There is no evidence before the Court
24 indicating that Plaintiff exhausted this appeal. Plaintiff's assertions are insufficient to
25 raise a genuine issue of material fact regarding this issue.

26 Plaintiff's two appeals regarding his RVRs did not exhaust his administrative
27 remedies. These appeals alleged that Plaintiff's due process rights had been violated in
28 adjudicating his guilt and imposing privilege restrictions. Those claims are not at issue in

1 the instant action. (ECF Nos. 18 & 19.) Allegations regarding the RVRs would not have
2 put prison officials on notice that Plaintiff was not afforded adequate exercise or
3 provided officials with an opportunity to redress that grievance. See Griffin, 557 F.3d at
4 1120-21. Although Plaintiff exhausted his appeals regarding the RVRs, he did not
5 exhaust his remedies with regard to the claim alleged in this action.

6 **VI. CONCLUSION AND RECOMMENDATION**

7 The Court finds that Plaintiff has not met his burden of putting forth sufficient
8 evidence to raise a genuine issue of fact regarding exhaustion. Based on the foregoing,
9 the Court HEREBY RECOMMENDS that Defendants' motion for summary judgment
10 (ECF No. 31) be GRANTED, thus concluding this action in its entirety.

11 These Findings and Recommendations are submitted to the United States
12 District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1).
13 Within **fourteen** (14) days after being served with these Findings and
14 Recommendations, any party may file written objections with the Court and serve a
15 copy on all parties. Such a document should be captioned "Objections to Magistrate
16 Judge's Findings and Recommendations." Any reply to the objections shall be served
17 and filed within fourteen (14) days after service of the objections. The parties are
18 advised that failure to file objections within the specified time may waive the right to
19 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153, 1156 (9th Cir. 1991).

20 IT IS SO ORDERED.
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22 Dated: November 4, 2014

23 /s/ Michael J. Seng
24 UNITED STATES MAGISTRATE JUDGE
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