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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

KEVIN KELLY,

Plaintiff,

v.

WASCO STATE PRISON, et al.,

Defendants.

CASE NO. 1:13-cv-00132-SKO PC

ORDER TO SHOW CAUSE WHY ACTION  
SHOULD NOT BE DISMISSED FOR  
FAILURE TO EXHAUST PRIOR TO FILING  
SUIT

(Doc. 1)

TWENTY-DAY DEADLINE

Plaintiff Kevin Kelly, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on December 21, 2012, in the Northern District of California. The action was transferred to the Eastern District of California on January 25, 2013.

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 confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). Prisoners are required to exhaust the available administrative remedies prior to filing suit. *Jones v. Bock*, 549 U.S. 199, 211, 127 S.Ct. 910 (2007); *McKinney v. Carey*, 311 F.3d 1198, 1199-1201 (9th Cir. 2002). Exhaustion is required regardless of the relief sought by the prisoner and regardless of the relief offered by the process, *Booth v. Churner*, 532 U.S. 731, 741, 121 S.Ct. 1819 (2001), and the exhaustion requirement applies to all suits relating to prison life, *Porter v. Nussle*, 435 U.S. 516, 532, 122 S.Ct. 983 (2002).

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1 In his complaint, Plaintiff alleges that he filed an inmate appeal but the process has not been  
2 completed. Thus, it appears that Plaintiff filed suit prematurely, without first exhausting his medical  
3 care claims.

4 Accordingly, Plaintiff is HEREBY ORDERED to show cause within **twenty (20) days** from  
5 the date of service of this order why this action should not be dismissed, without prejudice, for  
6 failure to exhaust prior to filing suit. *Wyatt v. Terhune*, 315 F.3d 1108, 1120 (9th Cir. 2003) (“A  
7 prisoner’s concession to nonexhaustion is a valid grounds for dismissal. . .”).

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11 IT IS SO ORDERED.

12 **Dated: March 27, 2013**

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE