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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHNNY G. BRIONES,
Plaintiff,
v.
S. FLORES, et al.,
Defendants.

No. 1:14-cv-01479 DLB PC
ORDER GRANTING DEFENDANTS’
MOTION FOR PARTIAL SUMMARY
JUDGMENT
(Document 27)
ORDER SETTING DISCOVERY AND
DISPOSITIVE MOTION DEADLINES

This is a civil rights action filed pursuant to 42 U.S.C. § 1983 by Johnny G. Briones (“Plaintiff”), a state prisoner proceeding pro se and in forma pauperis. The action is proceeding on his First Amended Complaint for (1) the use of excessive force in violation of the Eighth Amendment against Defendant Flores; and (2) failure to protect in violation of the Eighth Amendment against Defendants Walker, Jericoff, Catlett, Arrequin and Gonzales.¹

On May 25, 2016, the Court granted Defendants’ motion to modify the Discovery and Scheduling Order, and extended the time for filing motions based on exhaustion to June 23, 2016. The Court ruled that discovery shall be completed sixty (60) days after a ruling on a motion, and dispositive motions would be due one hundred-twenty (120) days after a ruling on a motion.

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¹ The parties consented to the jurisdiction of the United States Magistrate Judge.

1 Defendants Walker, Jericoff, Catlett, Arrequin and Gonzales filed the instant motion for
2 summary judgment for failure to exhaust on June 23, 2016.² Plaintiff filed a statement of non-
3 opposition on July 11, 2016, conceding that his claims against these five Defendants are not
4 exhausted. The motion is ready for decision pursuant to Local Rule 230(l).

5 **A. PLAINTIFF'S ALLEGATIONS**

6 Plaintiff alleges that on September 25, 2013,³ he was assaulted by Defendant Flores, while
7 Defendant Walker, a correctional officer, was present inside the holding cell in the Facility D
8 Medical Clinic. Plaintiff contends that Defendant Walker failed to protect him from the assault,
9 and that he knew that Plaintiff was mobility impaired and in handcuffs.

10 Defendants Jericoff, Catlett, Arrequin and Gonzales, also correctional officers, watched
11 the incident from outside the holding cell, but made no attempt to stop the assault.

12 **B. LEGAL STANDARD**

13 The failure to exhaust is subject to a motion for summary judgment in which the court
14 may look beyond the pleadings. Albino v. Baca, 747 F.3d 1162, 1170 (9th Cir. 2014). If the
15 Court concludes that Plaintiff has failed to exhaust, the proper remedy is dismissal without
16 prejudice. Jones, 549 U.S. at 223-24; Lira v. Herrera, 427 F.3d 1164, 1175-76 (9th Cir. 2005).

17 Defendants bear the burden of proof in moving for summary judgment for failure to
18 exhaust, Albino, 747 F.3d at 1166, and they must “prove that there was an available
19 administrative remedy, and that the prisoner did not exhaust that available remedy,” id. at 1172.
20 If Defendants carry this burden, the burden of production shifts to Plaintiff “to come forward with
21 evidence showing that there is something in his particular case that made the existing and
22 generally available administrative remedies effectively unavailable to him.” Id. This requires
23 Plaintiff to “show more than the mere existence of a scintilla of evidence.” In re Oracle Corp.
24 Sec. Litig., 627 F.3d 376, 387 (9th Cir. 2010) (citing Anderson v. Liberty Lobby, Inc., 477 U.S.
25 242, 252, 106 S.Ct. 2505 (1986)). “If the undisputed evidence viewed in the light most favorable
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27 ² The motion does not involve the claims against Defendant Flores.

28 ³ The appeal indicates that the incident occurred on September 26, 2013.

1 to the prisoner shows a failure to exhaust, a defendant is entitled to summary judgment under
2 Rule 56.” Albino, 747 F.3d at 1166. However, “[i]f material facts are disputed, summary
3 judgment should be denied, and the district judge rather than a jury should determine the facts.”

4 Id.

5 **C. DISCUSSION**

6 1. Exhaustion Requirement

7 Pursuant to the Prison Litigation Reform Act of 1995, “[n]o action shall be brought with
8 respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner
9 confined in any jail, prison, or other correctional facility until such administrative remedies as are
10 available are exhausted.” 42 U.S.C. § 1997e(a). The exhaustion requirement applies to all
11 inmate suits about prison life, Porter v. Nussle, 534 U.S. 516, 532, 122 S.Ct. 983 (2002)
12 (quotation marks omitted), regardless of the relief sought by the prisoner or the relief offered by
13 the process, Booth v. Churner, 532 U.S. 731, 741, 121 S.Ct. 1819 (2001), and unexhausted claims
14 may not be brought to court, Jones v. Bock, 549 U.S. 199, 211, 127 S.Ct. 910 (2007) (citing
15 Porter, 534 U.S. at 524).

16 The California Department of Corrections and Rehabilitation (“CDCR”) has an
17 administrative grievance system for prisoners to appeal any departmental decision, action,
18 condition, or policy having an adverse effect on prisoners’ welfare. Cal. Code Regs. tit. 15, §
19 3084.1. During the relevant times, a prisoner must proceed through an initial informal level and
20 three formal levels of review, culminating in a third-level decision. Cal. Code Regs. tit. 15, §
21 3084.5. In order to satisfy section 1997e(a), California state prisoners are required to use this
22 process to exhaust their claims prior to filing suit. Woodford v. Ngo, 548 U.S. 81, 85-86, 126
23 S.Ct. 2378 (2006); McKinney, 311 F.3d at 1199-1201.

24 2. Analysis

25 As indicated above, Plaintiff has conceded that he did not exhaust his claims against
26 Defendants Walker, Jericoff, Catlett, Arrequin and Gonzales.

27 It is undisputed that Plaintiff filed a grievance related to the incident, contending that
28 Defendant Flores assaulted him, and that “medical staff” knew that he suffered from seizures but

1 did not stop the assault. The appeal did not identify any staff members or indicate that
2 correctional officers were involved in the failure to protect. ECF No. 12, at 9-11.

3 The appeal bypassed the First Level and was denied at the Second Level. The Second
4 Level response also notified Plaintiff that he was not exhausting his claims against any staff
5 member not identified in the appeal, and that he could ask for assistance in identifying unknown
6 staff members. ECF No. 12, at 14.

7 In responding to the Second Level, Plaintiff identified Defendant Jericoff, though he was
8 not permitted to raise new issues at this stage, Woodford v. Ngo, 548 U.S. 81, 90-91 (2006), and,
9 in any event, he alleged only that Defendant Jericoff lied about the incident. ECF No. 12, at 12.

10 The appeal was denied at the Third Level on March 12, 2014. ECF No. 12, at 17-18.

11 As Defendants note, these facts are distinguishable from those in the recent Ninth Circuit
12 case Reyes v. Smith, 810 F.3d 654, 659 (2016), where the Ninth Circuit found that claims against
13 individuals not named in a grievance were exhausted. In Reyes, the Court found that the prison
14 had adequate notice of the claims because it overlooked the procedural deficiency and issued a
15 decision on the merits nonetheless. Reyes, 810 F. 3d at 658.

16 Here, Plaintiff was specifically informed that his appeal would not exhaust claims against
17 any unnamed staff members, and the prison did not render a decision on the merits against anyone
18 other than Defendant Flores.

19 Therefore, based on Plaintiff's concession and the undisputed facts, Plaintiff has failed to
20 exhaust his claims against Defendants Walker, Jericoff, Catlett, Arrequin and Gonzales.

21 **D. ORDER**

22 Defendants' motion for partial summary judgment is GRANTED and Plaintiff's claims
23 against Defendants Walker, Jericoff, Catlett, Arrequin and Gonzales are DISMISSED WITHOUT
24 PREJUDICE for failure to exhaust. Defendants Walker, Jericoff, Catlett, Arrequin and Gonzales
25 are DISMISSED from this action.

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It is FURTHER ORDERED that discovery on the remaining claim against Defendant Flores shall be completed by **October 24, 2016**, and dispositive motions must be filed by **December 21, 2016**.

IT IS SO ORDERED.

Dated: August 26, 2016

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE