

1 relating to prison life. *Porter v. Nussle*, 435 U.S. 516 (2002).

2 Plaintiff checked the lines on the form complaint indicating that there is a grievance
3 procedure at the institution of his confinement and that he presented the facts in his complaint
4 through all levels of review. (Doc. 1, p. 2.) However, Plaintiff's notes under that section indicate
5 that his appeal, PVSP-D-15-00082, was cancelled at the third level and that his challenge of that
6 cancellation was denied. (*Id.*) Plaintiff also attached a copy of a letter from the third level of
7 review which returned the appeal to Plaintiff since he did not sign and date it. (*Id.*, p. 13.)
8 Ultimately PVSP-D-15-00082 was cancelled as untimely at the third level as Plaintiff also
9 attached a copy of the third level decision which denied his challenge to its cancellation as
10 untimely. (*Id.*, pp. 15-16.)¹

11 “[P]roper exhaustion of administrative remedies is necessary” and the exhaustion
12 requirement may not be satisfied “by filing an untimely or otherwise procedurally defective . . .
13 appeal.” *Woodford v. Ngo*, 548 U.S. 81, 83-84, 126 S.Ct. 2378 (2006). “Proper exhaustion
14 demands compliance with an agency’s deadlines and other critical procedural rules. . . .” *Id.* at
15 90. The exhibits that Plaintiff attached to the Complaint show that his request for third level
16 review on PVSP-D-15-00082 was untimely and that his challenge to that finding was denied. It
17 thus appears Plaintiff filed suit prematurely without first exhausting available administrative
18 remedies in compliance with section 1997e(a). *Wyatt v. Terhune*, 315 F.3d 1108, 1120 (9th Cir.
19 2003) (“A prisoner’s concession to nonexhaustion is a valid ground for dismissal. . . .”). This is
20 error is fatal to this action.

21 Accordingly, it is HEREBY ORDERED that:

- 22 (1) Plaintiff is ORDERED to show cause within **twenty-one (21) days** from the date
23 of service of this order why this action should not be dismissed for failure to
24 exhaust administrative remedies prior to filing suit; and

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28 ¹ These are the only two decisions on PVSP-D-15-00082 that Plaintiff submitted.

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(2) **Plaintiff is warned that failure to timely respond to this order will result in recommendation that this action be dismissed for Plaintiff's failure to obey a court order.**

IT IS SO ORDERED.

Dated: **June 5, 2017**

/s/ Sheila K. Olerto
UNITED STATES MAGISTRATE JUDGE