

1 (9th Cir. 2002). Exhaustion is required regardless of the relief sought by the prisoner and
2 regardless of the relief offered by the process. *Booth v. Churner*, 532 U.S. 731, 741 (2001). The
3 exhaustion requirement applies to all suits relating to prison life. *Porter v. Nussle*, 435 U.S. 516
4 (2002). Exhaustion under § 1997(e) is an affirmative defense, *Jones*, at 216, most commonly
5 raised by a defendant in a motion for summary judgment under Rule 56 of the Federal Rules of
6 Civil Procedure, *Albino v. Baca*, 747 F.3d 1162, 1169-70 (9th Cir. 2014).

7 However, “the PLRA mandates early judicial screening of prisoner complaints and
8 requires prisoners to exhaust prison grievance procedures before filing suit.” *Jones*, at 202.
9 Exhaustion is an issue of “judicial administration” that is “appropriately decided early in the
10 proceeding.” *Albino*, at 1170 (citing *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 50-51
11 (1938) (referring to the “long-settled rule of judicial administration that no one is entitled to
12 judicial relief for a supposed or threatened injury until the prescribed administrative remedy has
13 been exhausted”). Where, as here, a prisoner’s failure to exhaust is clear from the face of the
14 complaint, it is properly addressed at screening for failure to state a claim upon which relief could
15 be granted. *Albino*, at 1168-69.

16 As noted in the OSC, although Plaintiff checked the boxes indicating he exhausted
17 available administrative remedies, his request for review at the third level was cancelled as
18 untimely. (Doc. 1, p. 2.) This was confirmed by an exhibit Plaintiff attached to the Complaint.
19 (*Id.*, p. 13.) This action must be dismissed without prejudice because of Plaintiff’s admitted
20 failure to exhaust available administrative remedies prior to filing suit.

21 Accordingly, it is HEREBY RECOMMENDED that this action be dismissed, without
22 prejudice, for Plaintiff’s failure to exhaust available administrative remedies prior to filing suit.
23 42 U.S.C. § 1997e(a).

24 These Findings and Recommendations will be submitted to the United States District
25 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within 21
26 days after being served with these Findings and Recommendations, Plaintiff may file written
27 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s
28 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the

1 specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834,
2 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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4 IT IS SO ORDERED.

5 Dated: July 12, 2017

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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