

1 accomplish this by presenting evidence that negates an essential element of the non-moving
2 party's case. *Id.* Alternatively, the movant can demonstrate that the non-moving party cannot
3 produce evidence to support an essential element of his claim that must be proven at trial. *Id.*;
4 Fed. R. Civ. P. 56(c)(1)(B). “[A] complete failure of proof concerning an essential element of the
5 non-moving party’s case necessarily renders all other facts immaterial.” *Celotex*, 477 U.S. at
6 322–23.

7 If the moving party meets this initial showing, the burden shifts to the non-moving party
8 to establish “specific facts showing a genuine issue for trial.” *Anderson v. Liberty Lobby, Inc.*,
9 477 U.S. 242, 250 (1986). The non-moving party cannot simply rely on the pleadings and
10 conclusory allegations in an affidavit. *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 888 (1990);
11 *see also Celotex*, 477 U.S. at 324. “Where the record taken as a whole could not lead a rational
12 trier of fact to find for the non-moving party, there is no genuine issue for trial.” *Matsushita Elec.*
13 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). However, when deciding a motion
14 for summary judgment, the court must view any inferences drawn from the underlying facts in a
15 light most favorable to the non-moving party. *Id.*

16 The Ninth Circuit has “held consistently that courts should construe liberally motion
17 papers and pleadings filed by *pro se* inmates and should avoid applying summary judgment rules
18 strictly.” *Soto*, 882 F.3d at 872 (quoting *Thomas v. Ponder*, 611 F.3d 1144, 1150 (9th Cir.
19 2010)). While prisoners are relieved from strict compliance, they still must “identify or submit
20 some competent evidence” to support their claims. *Soto*, 882 F.3d at 872. Plaintiff’s verified
21 complaint may serve as an affidavit in opposition to summary judgment if based on personal
22 knowledge and specific facts admissible in evidence. *Lopez v. Smith*, 203 F.3d 1122, 1132 n.14
23 (9th Cir. 2000) (en banc).

24 **B. Exhaustion of Administrative Remedies**

25 The Prison Litigation Reform Act provides that “[n]o action shall be brought with respect
26 to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined
27 in any jail, prison, or other correctional facility until such administrative remedies as are
28 available are exhausted.” 42 U.S.C. § 1997e(a). Exhaustion of administrative remedies is

1 mandatory, and “unexhausted claims cannot be brought in court.” *Jones v. Bock*, 549 U.S. 199,
2 211 (2007). Inmates are required to “complete the administrative review process in accordance
3 with the applicable procedural rules, including deadlines, as a precondition to bringing suit in
4 federal court.” *Woodford v. Ngo*, 548 U.S. 81, 88, 93 (2006). The exhaustion requirement applies
5 to all inmate suits relating to prison life, *Porter v. Nussle*, 534 U.S. 516, 532 (2002), regardless
6 of the relief sought by the prisoner or offered by the administrative process. *Booth v. Churner*,
7 532 U.S. 731, 741 (2001).

8 The PLRA requires “proper exhaustion,” which means that “the prisoner must complete
9 the administrative review process in accordance with the applicable procedural rules, including
10 deadlines, as a precondition to suing in federal court.” *Woodford*, 548 U.S. at 88, 93. The rules
11 that must be followed, in other words, “are defined not by the PLRA, but by the prison grievance
12 process itself.” *Jones*, 549 U.S. at 218. “The level of detail necessary in a grievance to comply
13 with the grievance procedures will vary from system to system . . . but it is the prison’s
14 requirements, and not the PLRA, that define the boundaries of proper exhaustion.” *Id.* The
15 exhaustion requirement allows prison officials to have an opportunity to resolve disputes before
16 the filing of a court action against them. *Id.* at 204.

17 The failure to exhaust administrative remedies is an affirmative defense that the
18 defendant must plead and prove. *Id.* at 204, 216. The defendant bears the burden of producing
19 evidence that proves a failure to exhaust; summary judgment is appropriate only if the
20 undisputed evidence, viewed in the light most favorable to the plaintiff, shows the plaintiff failed
21 to exhaust. *Albino v. Baca*, 747 F.3d 1162, 1166 (9th Cir. 2014). On a motion for summary
22 judgment, the defendant bears the initial burden of proving (1) the existence of an available
23 administrative remedy, and (2) the plaintiff failed to exhaust that remedy. *Id.* at 1172. If the
24 defendant makes this showing, the burden shifts to the prisoner to present evidence showing
25 “that there is something in his particular case that made the existing and generally available
26 administrative remedies effectively unavailable to him.” *Id.* (citation omitted). A prisoner may
27 not file a complaint raising non-exhausted claims. *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th
28 Cir. 2010).

1 The ultimate burden of proof, however, remains with the defendant. *Albino*, 747 F.3d at
2 1172. “If a motion for summary judgment is denied, disputed factual questions relevant to
3 exhaustion should be decided by the judge.” *Id.* at 1170. If the court finds that remedies were not
4 available, the prisoner exhausted available remedies, or the failure to exhaust available remedies
5 should be excused, the case proceeds to the merits. *Id.* at 1171.

6 C. CDCR Health Care Grievance Process

7 Plaintiff does not dispute that Defendants have met their initial burden of showing that an
8 available administrative remedy exists. The California Department of Corrections and
9 Rehabilitation has an administrative grievance system for prisoners to appeal a policy, decision,
10 action, condition, or omission by the department or staff having an adverse effect on prisoner
11 health, safety, or welfare. Cal. Code Regs. tit. 15, § 3084.1(a) (2016).¹ Compliance with 42
12 U.S.C. § 1997e(a) requires California state prisoners to utilize CDCR’s grievance process to
13 exhaust their claims prior to filing a lawsuit in court. *See Sapp v. Kimbrell*, 623 F.3d 813, 818
14 (9th Cir. 2010); *McKinney v. Carey*, 311 F.3d 1198, 1199 (9th Cir. 2002) (holding that exhaustion
15 is a precondition to suit).

16 In 2016, the year relevant to Plaintiff’s claims, California regulations required that
17 inmates pursue administrative grievances through three levels of review to exhaust their
18 administrative remedies. Cal. Code Regs. tit. 15, §§ 3084.1(b), 3084.7(d)(3) (repealed June 1,
19 2020)). Inmate health care appeals are processed slightly differently from non-health care
20 appeals, although they also must proceed through the three formal levels.

21 The Health Care Correspondence and Appeals Branch (“HCCAB”) is part of the
22 California Correctional Health Care Services (“CCHCS”), and “receives, reviews, and maintains
23 all health care appeals/grievances accepted for the final (headquarters) level of review in the
24 inmate health care appeals/grievance process, and renders decisions on such appeals/grievances.”
25 (Hart Decl., Doc. 85-6 at ¶ 3.)

26
27 ¹ Effective June 1, 2020, the new rules are set out in Cal. Code Regs. tit. 15, §§ 3480–3486. For purposes
28 of these Findings and Recommendations, all citations refer to the version of the regulations effective at
times relevant to Plaintiff’s claims.

1 The amount of detail in an administrative grievance necessary to properly exhaust a claim
2 is determined by the prison's applicable grievance procedures. *Jones v. Bock*, 549 U.S. 199, 218
3 (2007); *Ngo*, 548 U.S. at 90. California prisoners are required to lodge their administrative
4 complaint on a CDCR-602 HC form for a health care matter (or CDCR-602 form for non-health
5 care matters). The level of specificity required in the appeal is described by regulation:

6 The inmate or parolee **shall list all staff member(s) involved** and shall describe
7 their involvement in the issue. To assist in the identification of staff members,
8 the inmate or parolee **shall include the staff member's last name, first initial,**
9 **title or position, if known, and the dates of the staff member's involvement**
10 **in the issue under appeal.** If the inmate or parolee does not have the requested
11 identifying information about the staff member(s), he or she shall provide any
12 other available information that would assist the appeals coordinator in making
13 a reasonable attempt to identify the staff member(s) in question . . . The inmate
or parolee shall state all facts known and available to him/her regarding the
issue being appealed at the time of submitting the Inmate/Parolee Appeal form,
and if needed, the Inmate/Parolee Appeal Form Attachment.

14 Cal. Code Regs. tit. 15, § 3084.2(a)(3)–(4) (emphasis added); *see also Sapp v. Kimbrell*, 623
15 F.3d 813, 824 (9th Cir. 2010) (“To provide adequate notice, the prisoner need only provide the
16 level of detail required by the prison’s regulations”).

17 **III. DISCUSSION**

18 From the beginning of Plaintiff’s incarceration on October 8, 2016, to the filing of the
19 original complaint of June 20, 2016, Plaintiff filed no health care appeals that identified Warden
20 Davey by name or title or alleged his failure to provide medical treatment. (Moseley Decl., Doc.
21 85-4 at ¶ 7; Mendez Decl., Doc. 85-5 at ¶ 6; Hart Decl., Doc. 85-6 at ¶ 9.) During the same time,
22 Plaintiff filed no health care appeals that identified J. Lewis by name or title. (Mendez Decl., Doc.
23 85-5; Hart Decl., Doc. 85-6 at ¶ 9.) Between June 9, 2016 and June 9, 2017, Plaintiff was placed
24 on appeals restriction under Cal. Code Regs., tit. 15, § 3084.4 for abusing the administrative
25 remedies process. (Mendez. Decl., Doc. 85-5 ¶ 7.)

26 In his response, Plaintiff indicates that his claims are based on his grievance and appeals
27 log # SATF-HC 15062651, (Doc. 89), which are attached to the original complaint. (*See* Doc. 1-
28 1.) Plaintiff argues that he exhausted his administrative remedies by appealing this grievance to

1 exhaustion. A review of log # SATF-HC 15062651 indicates that Plaintiff suffered from severe
2 medical conditions and submitted numerous health care requests. (*See id.*) However, this
3 grievance concerned the treatment he received from Dr. Scharffenberg, who is not a party to this
4 action, for his spinal cord tumors. The grievance did not identify Dr. Lewis or Warden Davey, it
5 did not provide enough information so their involvement could be discovered, and it did not
6 describe their involvement in the alleged tortious conduct. (Doc. 1-1 at 4) In fact, it asserted
7 solely that Dr. Scharffenberg failed to properly perform an MRI exam. *Id.* Consequently, log #
8 SATF-HC 15062651 does not satisfy the requirements of section 3084.2. *See, e.g., Linder v.*
9 *Soltenian*, No. 2:18-cv-2281-JAM-DMC-P, 2019 WL 5692952, at *8 (E.D. Cal. Nov. 4, 2019),
10 adopted, No. 2:18-cv-2281-JAM-DMC-P, 2019 WL 6894284 (E.D. Cal. Dec. 18, 2019); *Wallace*
11 *v. Ducart*, No. 16-CV-03798-SI, 2018 WL 4053485, at *12 (N.D. Cal. Aug. 24, 2018); *Parks v.*
12 *Chappell*, No. C-13-4048 EMC (pr), 2015 WL 3466280 (N.D. Cal. 2015); *Martinez v. Swift*, No.
13 C-13-3973 RS (pr), 2015 WL 1349525, at *2 (N.D. Cal. 2015).

14 Because Defendants have met their burden to show that Plaintiff failed to exhaust the
15 administrative remedies available to him. Thus, the burden shifted to Plaintiff to come forward
16 with evidence showing that the administrative remedies were unavailable to him. *See Albino*, 747
17 F.3d at 1172. Plaintiff does not argue this occurred, and the evidence demonstrates that Plaintiff
18 frequently utilized the administrative remedies available to him during this time. Consequently,
19 because he did not utilize and exhaust the administrative remedies as to his claims against Lewis
20 and Davey prior to filing this action, summary judgment in their favor is appropriate.

21 **IV. CONCLUSION**

22 For the foregoing reasons, the Court RECOMMENDS that Defendants' motion for
23 summary judgment be GRANTED.

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 14**
26 **days** after being served with these Findings and Recommendations, the parties may file written
27 objections with the Court. The document should be captioned "Objections to Magistrate Judge's
28 Findings and Recommendations." The parties are 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)).

3
4 IT IS SO ORDERED.

5 Dated: August 25, 2021

/s/ Jennifer L. Thurston
CHIEF UNITED STATES MAGISTRATE JUDGE

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