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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MARY LEE GAINES,  
Plaintiff,  
v.  
OFFICER BEAVER,  
Defendant.

Case No. 1:16-cv-01689-NONE-JLT (PC)

**FINDINGS AND RECOMMENDATIONS  
TO GRANT DEFENDANT’S MOTION FOR  
SUMMARY JUDGMENT FOR FAILURE  
TO EXHAUST**

(Doc. 55)

21-DAY DEADLINE

Defendant moves for summary judgment on the grounds that Plaintiff failed to exhaust administrative remedies prior to filing suit. (Doc. 55.) Plaintiff has failed to file an opposition or a statement of non-opposition to Defendant’s motion, and the time to do so has passed. (*See* Doc. 68.) For the reasons set forth below, the Court recommends that Defendant’s motion be granted and this action dismissed.

**I. SUMMARY OF FACTS**

Mary Lee Gaines has chronic obstructive pulmonary disease and chronic asthma, and she often requires an oxygen tank to assist her with breathing. Pl.’s Compl. 3 (Doc. 24). At all times relevant to this action, Plaintiff was incarcerated at Central California Women’s Facility. *Id.* Plaintiff alleges that she had difficulty breathing while at a prison chapel on May 10, 2015. *Id.* 4. Prison officials activated an “emergency code” and brought Plaintiff an oxygen tank. *Id.*

While being transported back to the “Skilled Nursing Facility,” Correctional Officer Voltz

1 stopped Plaintiff and told her she needed to be strip searched. *Id.* Plaintiff alleges that Defendant-  
2 Correctional Officer Beavers and other correctional officers removed Plaintiff’s oxygen tank and  
3 ordered her to be strip searched. *Id.* According to Plaintiff, although she had difficulty breathing,  
4 Officer Beavers told her, “I don’t care if you can’t breathe.” *Id.* Plaintiff alleges that, while being  
5 strip searched, she fainted and fell to the floor. *Id.* 5.

6 Plaintiff filed an administrative grievance regarding the incident on July 8, 2015. Defs.’  
7 Statement of Undisputed Facts (“SUF”) ¶ 9 (Doc. 55-3); Gates Decl. Ex. B (Doc. 55-4). In the  
8 grievance, Plaintiff alleged that Nursing Assistants Betty, Ray, and Thomas deprived her of an  
9 oxygen tank at the prison chapel and when returning from the chapel. *Id.* Plaintiff does not  
10 mention Officer Beavers. Prison officials partially granted Plaintiff’s grievance at the first level of  
11 review, permitting Plaintiff to carry her oxygen tank with her as necessary. *Id.* Plaintiff did not  
12 appeal the decision to the second level of review.

13 Plaintiff also filed a “reasonable accommodation request” regarding the incident on June  
14 5, 2015. SUF ¶ 13; Thissen Decl. Ex. B (Doc. 55-6). In her request, Plaintiff alleged that prison  
15 staff were deliberately indifferent to her shortness of breath. *Id.* The request did not provide any  
16 staff names. *Id.* When interviewed about the request, Plaintiff identified Officer Voltz, “who was  
17 the primary driving force as to ... having to complete an unclothed body search.” *Id.* Officials  
18 partially granted Plaintiff’s request at the first level of review, approving Plaintiff for use of an  
19 oxygen tank, a walker, and a wheelchair. *Id.* Plaintiff did not appeal the decision to the second  
20 level of review. SUF ¶ 13.

21 Plaintiff filed a second reasonable accommodation request on June 19, 2015. SUF ¶ 14;  
22 Thissen Decl. Ex. C. In the request, Plaintiff complains that staff were not allowing her to carry  
23 her oxygen tank with her wheelchair, and she requested an eggcrate mattress. *Id.* The request did  
24 not provide any staff names or incident dates. *Id.* Officials partially granted the request at the first  
25 level of review, approving Plaintiff for carrying an oxygen tank while using her wheelchair. *Id.*  
26 Plaintiff did not appeal the decision to the second level of review. SUF ¶ 14.

27 Plaintiff filed no other grievances concerning the events underlying this action. *See id.* ¶¶  
28 7, 9-15. Plaintiff filed suit on November 7, 2016. *Id.* ¶ 8.

1       **II. LEGAL STANDARDS**

2               **A. Summary Judgment**

3               Summary judgment is appropriate when the moving party “shows that there is no genuine  
4       dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R.  
5       Civ. P. 56(a). The moving party “initially bears the burden of proving the absence of a genuine  
6       issue of material fact.” *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376, 387 (9th Cir. 2010) (citing  
7       *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). The moving party may accomplish this by  
8       “citing to particular parts of materials in the record, including depositions, documents,  
9       electronically stored information, affidavits or declarations, stipulations ..., admissions,  
10      interrogatory answers, or other materials,” or by showing that such materials “do not establish the  
11      absence or presence of a genuine dispute, or that an adverse party cannot produce admissible  
12      evidence to support the fact.” Fed. R. Civ. P. 56(c)(1)(A), (B). When the non-moving party bears  
13      the burden of proof at trial, “the moving party need only prove that there is an absence of  
14      evidence to support the non-moving party’s case.” *Oracle Corp.*, 627 F.3d at 387 (citing *Celotex*,  
15      477 U.S. at 325); *see also* Fed. R. Civ. P. 56(c)(1)(B).

16              Summary judgment should be entered against a party who fails to make a showing  
17      sufficient to establish the existence of an element essential to that party’s case, and on which that  
18      party will bear the burden of proof at trial. *See Celotex*, 477 U.S. at 322. “[A] complete failure of  
19      proof concerning an essential element of the nonmoving party’s case necessarily renders all other  
20      facts immaterial.” *Id.* at 322–23. In such a circumstance, summary judgment should be granted,  
21      “so long as whatever is before the district court demonstrates that the standard for the entry of  
22      summary judgment ... is satisfied.” *Id.* at 323.

23              **B. Exhaustion of Administrative Remedies**

24              The Prison Litigation Reform Act provides that “[n]o action shall be brought with respect  
25      to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in  
26      any jail, prison, or other correctional facility until such administrative remedies as are available  
27      are exhausted.” 42 U.S.C. § 1997e(a). Exhaustion of administrative remedies is mandatory and  
28      “unexhausted claims cannot be brought in court.” *Jones v. Bock*, 549 U.S. 199, 211 (2007).

1 Inmates are required to “complete the administrative review process in accordance with the  
2 applicable procedural rules, including deadlines, as a precondition to bringing suit in federal  
3 court.” *Woodford v. Ngo*, 548 U.S. 81, 88, 93 (2006). The exhaustion requirement applies to all  
4 inmate suits relating to prison life, *Porter v. Nussle*, 534 U.S. 516, 532 (2002), regardless of the  
5 relief sought by the prisoner or offered by the administrative process, *Booth v. Churner*, 532 U.S.  
6 731, 741 (2001).

7 The failure to exhaust administrative remedies is an affirmative defense, which the  
8 defendant must plead and prove. *Jones*, 549 U.S. at 204, 216. The defendant bears the burden of  
9 producing evidence that proves a failure to exhaust; and, summary judgment is appropriate only if  
10 the undisputed evidence, viewed in the light most favorable to the plaintiff, shows the plaintiff  
11 failed to exhaust. *Albino v. Baca*, 747 F.3d 1162, 1166 (9th Cir. 2014). On a motion for summary  
12 judgment, the defendant must prove (1) the existence of an available administrative remedy and  
13 (2) that Plaintiff failed to exhaust that remedy. *Williams v. Paramo*, 775 F.3d 1182, 1191 (9th Cir.  
14 2015) (citations omitted). If the defendant meets this burden, “the burden shifts to the plaintiff,  
15 who must show that there is something particular in his case that made the existing and generally  
16 available administrative remedies effectively unavailable to him....” *Id.* If the plaintiff fails to  
17 meet this burden, the court must dismiss the unexhausted claims or action without prejudice. *See*  
18 *Lira v. Herrera*, 427 F.3d 1164, 1175 (9th Cir. 2005).

### 19 **C. CDCR Grievance Process**

20 The CDCR has an administrative grievance system for prisoners to appeal a policy,  
21 decision, action, condition, or omission by the department or staff if it has an adverse effect on  
22 prisoner health, safety, or welfare. Cal. Code Regs. tit. 15, §§ 3084.1(a) (2016); 3999.226(a).  
23 Compliance with 42 U.S.C. § 1997e(a) requires California state prisoners to utilize CDCR’s  
24 grievance process to exhaust their claims prior to filing suit in court. *See Sapp v. Kimbrell*, 623  
25 F.3d 813, 818 (9th Cir. 2010); *see also Woodford*, 548 U.S. at 85-86. Administrative appeals are  
26 generally subject to two to three levels of review before the remedy is deemed exhausted. Cal.  
27 Code Regs. tit. 15, §§ 3084.1(b) (2016), 3084.7(d)(3) (2016), 3999.226(g), 3999.230(h); *see also*  
28 *Sapp*, 623 F.3d at 818.

1     **III.   DISCUSSION**

2           The PLRA requires “proper exhaustion,” which means that “the prisoner must complete  
3 the administrative review process in accordance with the applicable procedural rules ... as a  
4 precondition to bringing suit in federal court.” *Woodford*, 548 U.S. at 88, 93. The rules that must  
5 be followed, in other words, “are defined not by the PLRA, but by the prison grievance process  
6 itself.” *Jones*, 549 U.S. at 218. “The level of detail necessary in a grievance to comply with the  
7 grievance procedures will vary from system to system ..., but it is the prison’s requirements, and  
8 not the PLRA, that define the boundaries of proper exhaustion.” *Id.*

9           Prior to 2011, California’s grievance procedures only required inmates to “describe the  
10 problem and the action requested.” *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014)  
11 (quoting former Cal. Code Regs. tit. 15, § 3084.2). The regulations were amended in 2010. *See*  
12 Cal. Code Regs. tit. 15, § 3084.2 (History Notes 11-12). In 2015, the regulations required the  
13 following:

14           The inmate ... shall list all staff member(s) involved and shall describe their  
15 involvement in the issue.... [T]he inmate ... shall include the staff member’s last  
16 name, first initial, title or position, if known, and the dates of the staff member’s  
17 involvement in the issue under appeal. If the inmate ... does not have the requested  
18 identifying information about the staff member(s), he or she shall provide any other  
19 available information that would assist the appeals coordinator in making a  
20 reasonable attempt to identify the staff member(s) in question.

21           *Id.* § 3084.2(a)(3) (2016). Additionally, the regulations required that a prisoner pursue an appeal  
22 through three levels of review in order to exhaust administrative remedies. *Id.* §§ 3084.1(b)  
23 (2016), 3084.7(d)(3) (2016).

24           Plaintiff filed three grievances related the incident underlying this action, which occurred  
25 on May 10, 2015. *See id.* ¶¶ 7, 9-15. None of these grievances exhausted the claims in Plaintiff’s  
26 complaint. First, none of the grievances identified Defendant Beavers by name or provided other  
27 information that would assist in a reasonable attempt to identify her. Second, she did not pursue  
28 any of the grievances beyond the first level of review. *Id.* ¶¶ 9, 13-14.

          The Supreme Court has held “that the PLRA exhaustion requirement requires proper  
exhaustion.” *Woodford*, 548 U.S. at 93. To properly exhaust, prisoners must comply with the

1 prison's grievance procedures. *Jones*, 549 U.S. at 218. That is, "the prison's requirements ...  
2 define ... proper exhaustion." *Id.* It is clear that Plaintiff's grievances did not comply with  
3 CDCR's exhaustion requirements and therefore did not properly exhaust the claims at issue in  
4 this action.

5 **IV. CONCLUSION AND RECOMMENDATION**

6 Based on the foregoing, the Court recommends that Defendant's motion for summary  
7 judgment (Doc. 55) be **GRANTED** and this action **DISMISSED** without prejudice for failure to  
8 exhaust administrative remedies.

9 These Findings and Recommendations will be submitted to the United States District  
10 Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). **Within 21 days**  
11 of the date of service of these Findings and Recommendations, Plaintiff may file written  
12 objections with the Court. The document should be captioned, "Objections to Magistrate Judge's  
13 Findings and Recommendations." Plaintiff's failure to file objections within the specified time  
14 may result in waiver of her rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir.  
15 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

16  
17 IT IS SO ORDERED.

18 Dated: August 5, 2020

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE