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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

BOBBY LEE KINDER, JR.,	)	Case No.: 1:16-cv-01793-BAM (PC)
Plaintiff,	)	
v.	)	ORDER REQUIRING PLAINTIFF TO SHOW
L. MUNOZ, et al.,	)	CAUSE WHY ACTION SHOULD NOT BE
Defendants.	)	DISMISSED, WITHOUT PREJUDICE, FOR
	)	FAILURE TO EXHAUST PRIOR TO FILING SUIT
	)	(ECF No. 1)
	)	TWENTY-ONE DAY DEADLINE

Plaintiff Bobby Lee Kinder, Jr., a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on November 28, 2016.

Pursuant to the Prison Litigation Reform Act of 1995 (“PLRA”), “[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). Prisoners are required to exhaust the available administrative remedies prior to filing suit. Jones v. Bock, 549 U.S. 199, 211, 127 S.Ct. 910 (2007); McKinney v. Carey, 311 F.3d 1198, 1199-1201 (9th Cir. 2002). Exhaustion is required regardless of the relief sought by the prisoner and regardless of the relief offered by the process, Booth v. Churner, 532 U.S. 731, 741, 121 S.Ct. 1819 (2001), and the exhaustion requirement applies to all suits relating to prison life, Porter v. Nussle, 534 U.S. 516, 532, 122 S.Ct. 983 (2002).

1 Plaintiff asserts three separate claims in this action. In his complaint, Plaintiff concedes that he  
2 did not submit a request for administrative relief on his first and third claims and, although he  
3 submitted a request for administrative relief on his second claim, he did not appeal that request to the  
4 highest level. (ECF No. 1, pp. 3, 4, 5.) Thus, it appears Plaintiff filed suit prematurely without first  
5 exhausting his administrative remedies in compliance with the PLRA, section 1997e(a).

6 Accordingly, Plaintiff is HEREBY ORDERED to show cause within **twenty-one (21) days**  
7 from the date of service of this order why this action should not be dismissed, without prejudice, for  
8 failure to exhaust prior to filing suit. See, e.g., Albino v. Baca, 747 F.3d 1162, 1169 (9th Cir. 2014)  
9 (in rare cases where a failure to exhaust is clear from the face of the complaint, it may be dismissed for  
10 failure to state a claim); Medina v. Sacramento Cty. Sheriff's Dep't, No. 2:16-cv-0765 AC P, 2016  
11 WL 6038181, at \*3 (E.D. Cal. Oct. 14, 2016) ("When it is clear from the face of the complaint and any  
12 attached exhibits that a plaintiff did not exhaust his available administrative remedies before  
13 commencing an action, the action may be dismissed on screening for failure to state a claim."); Lucas  
14 v. Director of Dept. of Corrections, 2015 WL 1014037, at \*4 (E.D. Cal. Mar. 6, 2015) (relying on  
15 Albino and dismissing complaint without prejudice on screening due to plaintiff's failure to exhaust  
16 administrative remedies prior to filing suit).

17  
18 IT IS SO ORDERED.

19 Dated: June 30, 2017

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE