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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RUSSELL S. GRANT,

 Plaintiff,

 v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS, et al.,

 Defendants.

Case No. 1:17-cv-00682-DAD-JLT (PC)

**ORDER FOR PLAINTIFF TO SHOW CAUSE
WHY THIS ACTION SHOULD NOT BE
DISMISSED WITHOUT PREJUDICE FOR
FAILING TO EXHAUST HIS
ADMINISTRATIVE REMEDIES**

(Doc. 12)

21-DAY DEADLINE

The Prison Litigation Reform Act of 1995 prohibits any action being 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 (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 (2001). The exhaustion requirement applies to all suits relating to prison life. *Porter v. Nussle*, 435 U.S. 516 (2002).

In the First Amended Complaint, Plaintiff checked the boxes indicating that administrative remedies are available at the institution and that he submitted a grievance on his claims. (Doc. 12, p. 3.) However, Plaintiff also checked the box that the administrative process

1 was not complete. (*Id.*) In explanation, Plaintiff stated that he “went to second level CDCR
2 administrative grievance system, due to prison officials delaying investigation. Prison officials,
3 would not facilitate a proper resolution immediately. When Plaintiff was in grave danger within
4 their own prison system, other guards and staff did not want to be the ‘whistleblower.’” (*Id.*)
5 Plaintiff apparently filed this action rather than wait to address his grievance at all the required
6 levels of the appeals system. However, “[p]roper exhaustion demands compliance with an
7 agency’s deadlines and other critical procedural rules because no adjudicative system can
8 function effectively without imposing some orderly structure on the course of its proceedings.”
9 *Woodford v. Ngo* 548 U.S. 81, 91 (2006). It appears Plaintiff filed suit prematurely without first
10 exhausting available administrative remedies in compliance with section 1997e(a). *Wyatt v.*
11 *Terhune*, 315 F.3d 1108, 1120 (9th Cir. 2003) (“A prisoner’s concession to nonexhaustion is a
12 valid ground for dismissal. . .”).

13 Accordingly, Plaintiff is **ORDERED** to show cause **within 21 days** from the date of
14 service of this order why this action should not be dismissed, without prejudice, for his failure to
15 exhaust administrative remedies prior to filing suit. **Plaintiff is warned that failure to timely**
16 **respond to this order will result in recommendation of dismissal of this action for Plaintiff’s**
17 **failure to obey a court order.**

18
19 IT IS SO ORDERED.

20 Dated: **March 14, 2018**

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE