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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JERRY WAYNE BAYS,
Plaintiff,
v.
PHILLIPS, et al.,
Defendants.

Case No. 1:17-cv-00811-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. 1)
21-DAY DEADLINE

Plaintiff filed this action pursuant to 42 U.S.C. § 1983 on June 16, 2017. Pursuant to the Prison Litigation Reform Act of 1995, “[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 (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 Complaint, Plaintiff alleges that he is highly allergic to onion and onion powder and, on June 13, 2017, he went into a severe allergic reaction when he was wrongly served a meal

1 which included a salad with ranch dressing that contained onion powder. Plaintiff checked the
2 boxes on the form complaint indicating that administrative remedies are available at the
3 institution, that he submitted a grievance on his claims, and that he appealed it to the highest
4 level. However, this assertion cannot be truthful as Plaintiff signed the Complaint on the same
5 day that the incident occurred -- June 13, 2017 -- and it was filed in this Court three days later. It
6 is physically impossible for Plaintiff to have filed an inmate appeal and pursued it to the highest
7 level on the same date that the incident he complains of occurred. Thus, it appears Plaintiff filed
8 suit prematurely without first exhausting in compliance with section 1997e(a). *Wyatt v. Terhune*,
9 315 F.3d 1108, 1120 (9th Cir. 2003) (“A prisoner’s concession to nonexhaustion is a valid ground
10 for dismissal. . . .”).

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

16
17 IT IS SO ORDERED.

18 Dated: **July 24, 2017**

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE