

1 indicating that he submitted an inmate grievance on the facts alleged in this action and that the
2 process is completed. (Doc. 12, p. 2.) Plaintiff indicates his grievance was denied at the first
3 level because the treatment he desires is not an urgent or emergent medical procedure and that
4 Defendant LT Kirk granted it at the second level indicating that Plaintiff could not be denied
5 SRS, but that it would take time to set a plan in place and see what treatment plans are available.
6 (*Id.*)

7 From the exhibits to the SAC, it is apparent that Plaintiff did not file his inmate grievance
8 regarding the issues raised in this action until early July of 2017.¹ On July 13, 2017, Defendant
9 Nurse Larranaga responded to Plaintiff's grievance indicating that the nurse practitioner had
10 added a new medication to Plaintiff's current regimen and directed Plaintiff to discuss any
11 additional desired medications with the nurse practitioner at his next chronic care visit. (*Id.*, p. 6.)
12 Nurse Larranaga further indicated that SRS was not deemed an emergent, urgent need since
13 Plaintiff was still going through court proceedings and not sentenced yet, and that he would need
14 to be reevaluated after sentencing, or Plaintiff could request a pass to see an outside provider at
15 his own expense. (*Id.*) Plaintiff appealed this to the next level where LT Kirk responded on
16 August 1, 2017, that, as he had previously explained to Plaintiff, it was going to take some time
17 as "this is all new at a county level. However it is a priority to get some type of plan in place" for
18 Plaintiff and that LT Kirk would look into Plaintiff's new request to be housed where he can live
19 full-time in his gender preferred role. (*Id.*, p. 7.) Thus, it appears that Plaintiff filed suit, on June
20 27, 2017, he had not exhausted (and perhaps not even initiated) the available grievance procedure
21 in compliance with section 1997e(a). *Wyatt v. Terhune*, 315 F.3d 1108, 1120 (9th Cir. 2003) ("A
22 prisoner's concession to nonexhaustion is a valid ground for dismissal. . ."). Hence, this action
23 must be dismissed.

24 Accordingly, it is RECOMMENDED that this action be dismissed, without prejudice, for
25 Plaintiff's failure to exhaust available administrative remedies prior to filing suit. 42 U.S.C. §
26 1997e(a).

27 ¹ The exact date in July that Plaintiff presented his inmate grievance to jail personnel is unreadable. (*See* Doc. 12,
28 pp. 9-11.) However, the responses to it are dated near the end of July. (*Id.*, pp. 6-8.) Plaintiff filed a second
grievance on these issues on August 6, 2017. (*Id.*, pp. 12-13.)

