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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MORRIS ROBERSON,

Plaintiff,

v.

A. MANASRAH, et al.,

Defendants.

Case No. 1:17-cv-01062-SAB (PC)

ORDER DENYING PLAINTIFF'S
REQUEST FOR JUDICIAL NOTICE

(ECF No. 15)

Plaintiff Morris Roberson is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff's request for judicial notice, filed on October 27, 2017. Plaintiff requests that the Court take judicial notice of exhaustion of the administrative remedies as not subject to reasonable dispute. Plaintiff's motion must be denied.

Rule 201 of the Federal Rules of Evidence permits a court to take judicial notice of any facts which may be "accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b) and (d). However, a Court may only take judicial notice of facts contained in a state agency's records where the facts are not subject to a reasonable dispute." Brown v. Valoff, 422 F.3d 926, 931 n. 7 (9th Cir. 2005).

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1 The Court does not take judicial notice of documentation; rather, it takes judicial notice
2 of facts not subject to reasonable dispute. See Fed. R. Evid. 201. The failure to exhaust is an
3 affirmative defense, and the defendants bear the burden of raising and proving the absence of
4 exhaustion. Jones v. Bock, 549 U.S. 199, 216 (2007); Albino v. Baca, 747 F.3d 1162, 1166 (9th
5 Cir. 2014). “In the rare event that a failure to exhaust is clear from the face of the complaint, a
6 defendant may move for dismissal under Rule 12(b)(6).” Albino, 747 F.3d at 1166. Otherwise,
7 the defendants must produce evidence proving the failure to exhaust, and they are entitled to
8 summary judgment under Rule 56 only if the undisputed evidence, viewed in the light most
9 favorable to the plaintiff, shows he failed to exhaust. Id. Thus, the Court cannot take judicial
10 notice of the documentation provided by Plaintiff to determine factually whether he exhausted
11 the administrative remedies. Accordingly, Plaintiff’s request for judicial notice is denied.

12 IT IS SO ORDERED.

13
14 Dated: October 30, 2017


UNITED STATES MAGISTRATE JUDGE