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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JEREMY VILLANUEVA,
Plaintiff,
v.
VOSHALL, et al.,
Defendants.

Case No. 1:17-cv-01586-BAM (PC)

**ORDER REQUIRING PLAINTIFF TO SHOW
CAUSE WHY ACTION SHOULD NOT BE
DISMISSED, WITHOUT PREJUDICE, FOR
FAILURE TO EXHAUST PRIOR TO FILING
SUIT**

(ECF No. 1)

TWENTY-ONE (21) DAY DEADLINE

Plaintiff Jeremy Villanueva (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action was initiated on November 29, 2017. (ECF No. 1.)

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 (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), and the exhaustion requirement applies to all suits

1 relating to prison life, Porter v. Nussle, 534 U.S. 516, 532 (2002).

2 Plaintiff asserts two separate claims in this action. In his complaint, Plaintiff concedes
3 that he did not appeal either claim to the highest level, stating that “emergency relief is needed,
4 but I started appeal process to 1st level.” (ECF No. 1, pp. 3, 4.) Thus, it appears Plaintiff filed
5 suit prematurely without first exhausting his administrative remedies in compliance with the
6 PLRA, section 1997e(a).

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

18 IT IS SO ORDERED.

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20 Dated: May 14, 2018

21 /s/ Barbara A. McAuliffe
22 UNITED STATES MAGISTRATE JUDGE
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