

1 *Reyes v. Smith*, 810 F.3d 654 (9th Cir. 2016), does not apply to this case. (Id. at 9-10.) Lastly, the
2 magistrate judge found that Plaintiff failed to show that administrative remedies were effectively
3 unavailable to him, and thus he was not excused from failing to exhaust. (Id. at 7, 10-11.)

4 Plaintiff filed objections to the findings and recommendations on February 7, 2020. (Doc.
5 72.) Defendants filed a reply to the objections on February 19, 2020. (Doc. 73.) In his objections,
6 Plaintiff argues that *Reyes v. Smith, supra*, does apply to this case, and that Plaintiff exhausted all
7 the remedies that were available to him. (Doc. 72 at 3-5.)

8 In accordance with the provisions of 28 U.S.C. section 636(b)(1)(C), this Court has
9 conducted a *de novo* review of this case. Having carefully reviewed the entire file, including
10 Plaintiff's objections and Defendants' reply, the Court finds the findings and recommendations to
11 be supported by the record and proper analysis. The Court agrees that Plaintiff failed to properly
12 exhaust administrative remedies with respect to the claims in this action, and the exception to
13 proper exhaustion provided in *Reyes* does not apply. The Court also agrees that Plaintiff does not
14 meet his burden in showing that administrative remedies were unavailable.

15 Accordingly, the Court ORDERS:

- 16 1. The findings and recommendations issued on December 27, 2019 (Doc. 67) are
17 ADOPTED in full;
- 18 2. Defendants' motion for summary judgment (Doc. 54) is GRANTED;
- 19 3. This action is DISMISSED without prejudice for failure to exhaust administrative
20 remedies; and,
- 21 4. The Clerk of the Court is DIRECTED to close this case.

22 IT IS SO ORDERED.

23 Dated: December 15, 2020

24 
25 SENIOR DISTRICT JUDGE