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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KASEY F. HOFFMANN,
Plaintiff,
v.
L. PULIDO, et al,
Defendants.

Case No. 1:18-cv-00078-LJO-BAM (PC)
**FINDINGS AND RECOMMENDATIONS
REGARDING DISMISSAL OF ACTION,
WITHOUT PREJUDICE, FOR FAILURE TO
EXHAUST ADMINISTRATIVE REMEDIES**
(ECF Nos. 24, 26)
FOURTEEN (14) DAY DEADLINE

Plaintiff Kasey F. Hoffmann (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff’s complaint, filed on January 17, 2018, is currently before the Court for screening. (ECF No. 1.)

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). Plaintiff’s complaint, or any portion thereof, is subject to dismissal if it is frivolous or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2); 28 U.S.C. § 1915(e)(2)(B)(ii).

Pursuant to the Prison Litigation Reform Act of 1996, “[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

1 administrative remedies prior to filing suit. Jones v. Bock, 549 U.S. 199, 211 (2007); McKinney
2 v. Carey, 311 F.3d 1198, 1199–1201 (9th Cir. 2002). Exhaustion is required regardless of the
3 relief sought by the prisoner and regardless of the relief offered by the process, Booth v. Churner,
4 532 U.S. 731, 741 (2001), and the exhaustion requirement applies to all suits relating to prison
5 life, Porter v. Nussle, 435 U.S. 516, 532 (2002).

6 Plaintiff admits in his complaint that he did not submit an administrative grievance for any
7 of the claims in this action, believing that he was not required to do so. (ECF No. 1 at pp. 3, 4
8 and 5.) Despite Plaintiff’s assertion to the contrary, Plaintiff was required to submit a grievance
9 and exhaust his administrative remedies regarding the claims at issue in this action, which include
10 asserted violations of Equal Protection and Due Process, along with violations of the Eighth and
11 First Amendments. Thus, it appears clearly on the face of the complaint that Plaintiff filed suit
12 prematurely without first exhausting his administrative remedies in compliance with section
13 1997e(a).

14 In rare cases where a failure to exhaust is clear from the face of the complaint, it may be
15 dismissed for failure to state a claim. See, e.g., Albino v. Baca, 747 F.3d 1162, 1169 (9th Cir.
16 2014); Medina v. Sacramento Cty. Sheriff’s Dep’t, No. 2:16-cv-0765 AC P, 2016 WL 6038181,
17 at *3 (E.D. Cal. Oct. 14, 2016) (“When it is clear from the face of the complaint and any attached
18 exhibits that a plaintiff did not exhaust his available administrative remedies before commencing
19 an action, the action may be dismissed on screening for failure to state a claim.”); Lucas v. Dir. of
20 Dep’t. of Corrs., No: 2:14-cv-0590 DAD P, 2015 WL 1014037, at *4 (E.D. Cal. Mar. 6, 2015)
21 (relying on Albino and dismissing complaint without prejudice on screening due to plaintiff’s
22 failure to exhaust administrative remedies prior to filing suit).

23 Accordingly, it is **HEREBY RECOMMENDED** that this action be dismissed, without
24 prejudice, based on Plaintiff’s failure to exhaust administrative remedies prior to filing suit.

25 These findings and recommendations will be submitted to the United States District Judge
26 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). **Within fourteen**
27 **(14) days** after being served with these findings and recommendations, Plaintiff may file written
28 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s

1 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the
2 specified time may result in the waiver of the “right to challenge the magistrate’s factual
3 findings” on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v.
4 Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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6 IT IS SO ORDERED.

7 Dated: May 25, 2018

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE

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