



1 Booth v. Churner, 532 U.S. 731, 741 (2001), and the exhaustion requirement applies to all suits  
2 relating to prison life, Porter v. Nussle, 534 U.S. 516, 532 (2002).

3 Plaintiff asserts claims for deliberate indifference to serious medical needs in violation of  
4 the Eighth Amendment, retaliation in violation of the First Amendment, and a violation of the  
5 equal protection clause of the Fourteenth Amendment. In his complaint, Plaintiff concedes that,  
6 while there are administrative remedies available at his institution and that he submitted a request  
7 for administrative relief regarding the claims at issue in this action, he did not appeal any of his  
8 claims to the highest level. (ECF No. 1, pp. 3, 5.) Instead, Plaintiff asserts that, while he  
9 submitted a 602 appeal to the first level of review at California Substance Abuse Treatment  
10 Facility and State Prison, Corcoran (“CSATF”) on January 24, 2018, he has not received either a  
11 log number for his appeal or a first level decision on the merits of his appeal as of February 22,  
12 2018, the date he signed his complaint and mailed it to the Court.<sup>1</sup> (ECF No. 1, p. 3.)

13 Under the California Code of Regulations, absent any specific exemptions or exceptions,  
14 “[f]irst level responses shall be completed within 30 working days from date of receipt by the  
15 appeals coordinator.” Cal. Code Regs., tit. 15, § 3084.8(c)(1). “Working days” means Monday  
16 through Friday, excluding holidays. See Cal. Code Regs., tit. 15, § 3075(b)(1)(B) & (c).  
17 Therefore, assuming that the CSATF appeals coordinator received Plaintiff’s 602 appeal on  
18 January 24, 2018, the date that Plaintiff alleges that he submitted his appeal, the Appeals  
19 Coordinator had thirty working days from that date, or until March 8, 2018, to timely complete a  
20 first level response to Plaintiff’s appeal. However, since Plaintiff signed his complaint and  
21 mailed it to the Court on February 22, 2018 and this action was initiated on February 28, 2018,  
22 Plaintiff brought this action before the appeals coordinator’s time to complete the first level  
23 response to Plaintiff’s appeal had run. (ECF No. 1.) Consequently, it appears that Plaintiff  
24 prematurely filed suit without first exhausting his administrative remedies as required by 42  
25 U.S.C. § 1997e(a).

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26 <sup>1</sup> Pursuant to the prison mailbox rule, a pleading filed by a *pro se* prisoner is deemed to be filed as  
27 of the date the prisoner delivered it to the prison authorities for mailing to the court clerk. See  
28 Houston v. Lack, 487 U.S. 266, 270 (1988); Douglas v. Noelle, 567 F.3d 1103, 1108–09 (9th Cir.  
2009) (mailbox rule articulated in Houston applies to civil rights actions).

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

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13 IT IS SO ORDERED.

14 Dated: April 3, 2019

15 /s/ Barbara A. McAuliffe  
16 UNITED STATES MAGISTRATE JUDGE  
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