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8	UNITED STATES DISTRICT COURT	
9	EASTERN DISTRICT OF CALIFORNIA	
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11	DARNELL DUKES,	Case No. 1:18-cv-00288-LJO-BAM (PC)
12	Plaintiff,	ORDER REQUIRING PLAINTIFF TO SHOW CAUSE WHY ACTION SHOULD NOT BE
13	v.	DISMISSED WITHOUT PREJUDICE FOR FAILURE TO EXHAUST
14	CALIFORNIA DEPARTMENT OF CORRECTIONS AND	ADMINISTRATIVE REMEDIES PRIOR TO FILING SUIT
15	REHABILITATION,	(ECF No. 1)
16	Defendant.	
17		TWENTY-ONE (21) DAY DEADLINE
18	Plaintiff Darnell Dukes is a state prison	ner proceeding pro se and in forma pauperis in this
19	civil rights action pursuant to 42 U.S.C. § 1983. This action was initiated on February 28, 2018.	
20	(ECF No. 1.)	
21	Pursuant to the Prison Litigation Refor	rm Act of 1995 ("PLRA"), "[n]o action shall be
22	brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a	
23	prisoner confined in any jail, prison, or other correctional facility until such administrative	
24	remedies as are available are exhausted." 42 U.S.C. § 1997e(a). Prisoners are required to exhaust	
25	the available administrative remedies prior to	filing suit. Jones v. Bock, 549 U.S. 199, 211
26	(2007); McKinney v. Carey, 311 F.3d 1198, 1199–1201 (9th Cir. 2002). Exhaustion is required	
27	regardless of the relief sought by the prisoner and regardless of the relief offered by the process,	
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<u>Booth v. Churner</u>, 532 U.S. 731, 741 (2001), and the exhaustion requirement applies to all suits
 relating to prison life, <u>Porter v. Nussle</u>, 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 claims to the highest level. (ECF No. 1, pp. 3, 5.) Instead, Plaintiff asserts that, while he 8 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 log number for his appeal or a first level decision on the merits of his appeal as of February 22, 11 2018, the date he signed his complaint and mailed it to the Court.¹ (ECF No. 1, p. 3.) 12

13 Under the California Code of Regulations, absent any specific exemptions or exceptions, "[f]irst level responses shall be completed within 30 working days from date of receipt by the 14 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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 ¹ Pursuant to the prison mailbox rule, a pleading filed by a *pro se* prisoner is deemed to be filed as
 of the date the prisoner delivered it to the prison authorities for mailing to the court clerk. <u>See</u>
 <u>Houston v. Lack</u>, 487 U.S. 266, 270 (1988); <u>Douglas v. Noelle</u>, 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 <u>Albino</u> 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 /s/ Barbara A. McAuliffe
15	UNITED STATES MAGISTRATE JUDGE
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