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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

KAREEM J. HOWELL,
Plaintiff,
v.
N. SELLIERS, et al.,
Defendants.

Case No. 1:18-cv-00420-EPG (PC)
ORDER FOR PLAINTIFF TO SHOW
CAUSE WHY THIS CASE SHOULD NOT
BE DISMISSED WITHOUT PREJUDICE
FOR FAILURE TO EXHAUST
THIRTY-DAY DEADLINE

Kareem J. Howell (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed the complaint commencing this action on March 27, 2018. (ECF No. 1).

It appears from the face of the complaint that Plaintiff did not exhaust administrative remedies before filing this action. Although he claims that there was a period of time when Defendants took away his personal property and left him naked in a cell, so that he could not file grievances, this period appears to have been brief. Plaintiff alleges he received his personal property back on March 15, 2018, and yet still did not exhaust administrative remedies.

Accordingly, the Court will order Plaintiff to file a response within 30 days, explaining why his case should not be dismissed for failure to exhaust his administrative remedies. Such dismissal would be without prejudice, so that Plaintiff may refile the case once he has exhausted those remedies, if it is still possible to do so.

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1 **I. SCREENING REQUIREMENT**

2 The Court is required to screen complaints brought by prisoners seeking relief against a
3 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).
4 The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
5 legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or
6 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.
7 § 1915A(b)(1), (2). As Plaintiff is proceeding in forma pauperis (ECF No. 7), the Court may
8 also screen the complaint under 28 U.S.C. § 1915. “Notwithstanding any filing fee, or any
9 portion thereof, that may have been paid, the court shall dismiss the case at any time if the court
10 determines that the action or appeal fails to state a claim upon which relief may be granted.”
11 28 U.S.C. § 1915(e)(2)(B)(ii).

12 A complaint is required to contain “a short and plain statement of the claim showing
13 that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are
14 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
15 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell
16 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient
17 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Id.
18 (quoting Twombly, 550 U.S. at 570). The mere possibility of misconduct falls short of meeting
19 this plausibility standard. Id. at 679. While a plaintiff’s allegations are taken as true, courts
20 “are not required to indulge unwarranted inferences.” Doe I v. Wal-Mart Stores, Inc., 572 F.3d
21 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). Additionally, a
22 plaintiff’s legal conclusions are not accepted as true. Iqbal, 556 U.S. at 678.

23 Pleadings of pro se plaintiffs “must be held to less stringent standards than formal
24 pleadings drafted by lawyers.” Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010) (holding that
25 pro se complaints should continue to be liberally construed after Iqbal).

26 **II. LEGAL STANDARDS**

27 Section 1997e(a) of the Prison Litigation Reform Act of 1995 (PLRA) provides that
28 “[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any

1 other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until
2 such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). Prisoners
3 are required to exhaust the available administrative remedies prior to filing suit. Jones v. Bock,
4 549 U.S. 199, 211 (2007); McKinney v. Carey, 311 F.3d 1198, 1199-1201 (9th Cir. 2002).
5 Exhaustion is required regardless of the relief sought by the prisoner and regardless of the relief
6 offered by the process, unless “the relevant administrative procedure lacks authority to provide
7 any relief or to take any action whatsoever in response to a complaint.” Booth v. Churner, 532
8 U.S. 731, 736, 741 (2001); Ross v. Blake, 136 S.Ct. 1850, 1857, 1859. The exhaustion
9 requirement applies to all prisoner suits relating to prison life. Porter v. Nussle, 534 U.S. 516,
10 532 (2002). An untimely or otherwise procedurally defective appeal will not satisfy the
11 exhaustion requirement. Woodford v. Ngo, 548 U.S. 81, 90-91 (2006).

12 As the U.S. Supreme Court recently explained in Ross, 136 S.Ct. at 1856, regarding the
13 PLRA’s exhaustion requirement:

14 [T]hat language is “mandatory”: An inmate “shall” bring “no
15 action” (or said more conversationally, may not bring any action)
16 absent exhaustion of available administrative remedies.... [T]hat
17 edict contains one significant qualifier: the remedies must indeed
18 be “available” to the prisoner. But aside from that exception, the
19 PLRA’s text suggests no limits on an inmate’s obligation to
20 exhaust—irrespective of any “special circumstances.”

21 Id. (internal citations omitted).

22 **III. ANALYSIS**

23 It appears from the face of the complaint that Plaintiff has failed to exhaust his
24 administrative remedies before filing this lawsuit.

25 Plaintiff’s complaint includes a discussion of exhaustion of legal remedies, which states
26 the following:

27 Defendants S. Babb, A. Petterson, S. Tumacdor, and Gavacio illegally confiscated
28 all of the plaintiff’s personal property, moved the plaintiff to an isolated, naked
cell and directly order [sic] prison staff not to engage and/or issue the plaintiff
anything, including writing material and institutional complaint forms. Acting on
these illegal orders has render [sic] the institutional internal grievance process
here at CSP-Corcoan [UNAVAILABLE] to this plaintiff.

1 (ECF No. 1, at pgs. 10-11).

2
3 However, elsewhere in his complaint, Plaintiff states that “[o]n March 15, 2018, Plaintiff
4 received his personal property back.” (*Id.* at 10). He also describes how he wrote personal letters
5 to various officials and “placed them on legal notice that he intended to take immediately [sic]
6 legal actions against them....” *Id.* This establishes that Plaintiff did have his personal property
7 and the ability to write letters shortly after the incident in question, and strongly suggests that he
8 could have filed grievances at that time. It also suggests that Plaintiff had an intention to file
9 legal action immediately rather than waiting to complete the grievance process, despite the legal
10 requirement to do so.

11 Additionally, the incidents discussed in the complaint began on March 8, 2018. Plaintiff
12 filed this case on March 27, 2018, which is only 19 days after the event in question (and the
13 complaint itself is dated March 19, 2018). This strongly suggests that Plaintiff did not even
14 attempt to comply with the exhaustion requirement.

15 **VII. CONCLUSION AND ORDER TO SHOW CAUSE**

16 It appears, based on the face of the complaint, that Plaintiff failed to exhaust his
17 administrative remedies prior to filing his complaint.

18 Accordingly, it is HEREBY ORDERED that within **thirty (30) days** from the date of
19 service of this order, Plaintiff shall show cause why this case should not be dismissed, without
20 prejudice, for failure to exhaust available administrative remedies.

21 If Plaintiff fails to file a response, the Court will recommend to a district judge that
22 Plaintiff’s complaint be dismissed without prejudice for failure to exhaust administrative
23 remedies.

24 IT IS SO ORDERED.

25
26 Dated: August 28, 2018

27 /s/ Eric P. Gray
28 UNITED STATES MAGISTRATE JUDGE