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

ROBERT M. STEWARD,  
Plaintiff,  
v.  
GUITERAY, et al.,  
Defendants.

1:18-cv-00462-LJO-GSA-PC

**FINDINGS AND RECOMMENDATIONS,  
RECOMMENDING THAT THIS CASE BE  
DISMISSED, WITHOUT PREJUDICE, FOR  
PLAINTIFF’S FAILURE TO EXHAUST  
REMEDIES  
(ECF No. 1.)**

**OBJECTIONS, IF ANY, DUE IN 14 DAYS**

**I. BACKGROUND**

Plaintiff, Robert M. Steward, is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on April 5, 2018. (ECF No. 1.)

In the Complaint, Plaintiff indicates that he did not take any steps to exhaust his administrative remedies at the prison because of “[a] Jury finding of not guilty.” (ECF No. 1 at 3 ¶5.) Plaintiff asserts that there are no grievance procedures available at his institution, that he did not submit a request for administrative relief, and that he did not appeal his request for relief to the highest level. (Id.)

1 On April 11, 2018, the court issued an order to show cause, requiring Plaintiff to show  
2 cause why this case should not be dismissed based on his representation in the Complaint that  
3 he did not exhaust his administrative remedies. (ECF No. 8.)

4 On April 23, 2018, and April 27, 2018, Plaintiff filed responses to the court's order to  
5 show cause. (ECF Nos. 9, 10.) In his responses, Plaintiff contends that he is not required to  
6 exhaust his administrative remedies because "a California Superior Court's jury verdict  
7 supercedes and or renders prison administrative remedies and its relief obsolete [and] thus  
8 exhaustion of all prison administrative relief pertaining to this civil matter are met." (ECF Nos.  
9 9 at 1; 10 at 1.)

## 10 **II. EXHAUSTION OF REMEDIES**

11 Pursuant to the Prison Litigation Reform Act of 1995, "[n]o action shall be brought with  
12 respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner  
13 confined in any jail, prison, or other correctional facility until such administrative remedies as  
14 are available are exhausted." 42 U.S.C. § 1997e(a). Prisoners are required to exhaust the  
15 available administrative remedies prior to filing suit. Jones v. Bock, 549 U.S. 199, 211, 127  
16 S.Ct. 910 (2007); McKinney v. Carey, 311 F.3d 1198, 1199-1201 (9th Cir. 2002). Exhaustion  
17 is required regardless of the relief sought by the prisoner and regardless of the relief offered by  
18 the process, Booth v. Churner, 532 U.S. 731, 741, 121 S.Ct. 1819 (2001), and the exhaustion  
19 requirement applies to all suits relating to prison life, Porter v. Nussle, 435 U.S. 516, 532, 122  
20 S.Ct. 983 (2002).

21 A prisoner may be excused from complying with the PLRA's exhaustion requirement if  
22 he establishes that the existing administrative remedies were effectively unavailable to him. See  
23 Albino v. Baca, 747 F.3d 1162, 1172-73 (9th Cir. 2014). When an inmate's administrative  
24 grievance is improperly rejected on procedural grounds, exhaustion may be excused as  
25 "effectively unavailable." Sapp v. Kimbrell, 623 F.3d 813, 823 (9th Cir. 2010); see also Nunez  
26 v. Duncan, 591 F.3d 1217, 1224-26 (9th Cir. 2010) (warden's mistake rendered prisoner's  
27 administrative remedies "effectively unavailable"); Ward v. Chavez, 678 F.3d 1042, 1044-45  
28 (9th Cir. 2012) (exhaustion excused where futile); Brown v. Valoff, 422 F.3d 926, 940 (9th Cir.

1 2005) (plaintiff not required to proceed to third level where appeal granted at second level and  
2 no further relief was available); Marella v. Terhune, 568 F.3d 1024 (9th Cir. 2009) (excusing  
3 an inmate’s failure to exhaust because he did not have access to the necessary grievance forms  
4 to timely file his grievance).

5 In the rare event that a failure to exhaust is clear from the face of the complaint, the  
6 court may dismiss *sua sponte*. Bock, 549 U.S. at 215 (“A complaint is subject to dismissal for  
7 failure to state a claim if the allegations, taken as true, show the plaintiff is not entitled to  
8 relief.”); see also Salas v. Tillman, 162 Fed.App’x. 918 (11th Cir. 2006) (*sua sponte* dismissal  
9 of prisoner’s civil rights claims for failure to exhaust was not abuse of discretion; prisoner did  
10 not dispute that he timely failed to pursue his administrative remedies, and a continuance would  
11 not permit exhaustion because any grievance would be untimely).

12 **III. DISCUSSION**

13 Plaintiff’s response to the court’s order to show cause follows:

14 In response to the order to show cause 1:18-cv-00462-GSA-PC a California  
15 Superior Court’s jury verdict supercedes and or renders prison administrative  
16 remedies and its relief obsolete, thus exhaustion of all prison administrative  
relief pertaining to this civil matter are met.

17 (ECF Nos. 9 at 1; 10 at 1.) In his Complaint, Plaintiff’s brings claims for excessive force under  
18 42 U.S.C. § 1983 against prison correctional officers based on a cell extraction at the California  
19 Correctional Institution in Tehachapi, California, when Plaintiff was housed there. Plaintiff  
20 asserts in the Complaint that he did not submit or appeal a request for administrative relief at  
21 any level because of “a jury finding of not guilty.” (ECF No. 1 at 3 ¶5.)

22 Plaintiff has not explained how a jury verdict caused the appeals process to be  
23 unavailable to him. Based on Plaintiff’s statements, the court concludes that Plaintiff was  
24 required to exhaust his administrative remedies before filing this suit, but failed to do so.

25 **IV. CONCLUSION AND RECOMMENDATIONS**

26 Based on the foregoing, the court finds that Plaintiff failed to exhaust his administrative  
27 remedies before filing suit, pursuant to the Prison Litigation Reform Act of 1995, and failed to

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1 show that the exhaustion process was somehow unavailable to him. Accordingly, **IT IS**  
2 **HEREBY RECOMMENDED** that:

- 3 1. This case be DISMISSED, without prejudice, for Plaintiff's failure to exhaust  
4 his available administrative remedies before filing suit; and
- 5 2. The Clerk be directed to CLOSE this case.

6 These findings and recommendations are submitted to the United States District Judge  
7 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**  
8 **(14) days** after the date of service of these findings and recommendations, Plaintiff may file  
9 written objections with the court. Such a document should be captioned "Objections to  
10 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file  
11 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.  
12 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394  
13 (9th Cir. 1991)).

14  
15 IT IS SO ORDERED.

16 Dated: May 22, 2018

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE