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

ALONZO RAYSHAWN PERKINS,	)	Case No.: 1:18-cv-00501-SAB (PC)
	)	
Plaintiff,	)	ORDER REGARDING PLAINTIFF’S
	)	EXHAUSTION MOTION
v.	)	
	)	
A. MARTINEZ, et al.,	)	[ECF No. 34]
	)	
Defendants.	)	
	)	

Plaintiff Alonzo Rayshawn Perkins is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

On February 27, 2019, Plaintiff filed an “exhaustion motion.” (ECF No. 34.) In his motion, Plaintiff merely attaches copies of the inmate grievances he contends are relevant to the claims in this action. The Court therefore will construe Plaintiff’s motion as a request for judicial notice.

Rule 201 of the Federal Rules of Evidence permits a court to take judicial notice of any facts which may be “accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b) and (d). However, a Court may only take judicial notice of facts contained in a state agency’s records where the facts are not subject to a reasonable dispute.” Brown v. Valoff, 422 F.3d 926, 931 n. 7 (9th Cir. 2005).

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The Court does not take judicial notice of documentation; rather, it takes judicial notice of facts not subject to reasonable dispute. See Fed. R. Evid. 201. The failure to exhaust is an affirmative defense, and the defendants bear the burden of raising and proving the absence of exhaustion. Jones v. Bock, 549 U.S. 199, 216 (2007); Albino v. Baca, 747 F.3d 1162, 1166 (9th Cir. 2014). “In the rare event that a failure to exhaust is clear from the face of the complaint, a defendant may move for dismissal under Rule 12(b)(6).” Albino, 747 F.3d at 1166. Otherwise, the defendants must produce evidence proving the failure to exhaust, and they are entitled to summary judgment under Rule 56 only if the undisputed evidence, viewed in the light most favorable to the plaintiff, shows he failed to exhaust. Id. Thus, the Court cannot take judicial notice of the documentation provided by Plaintiff to determine factually whether he exhausted the administrative remedies. If Defendants file a motion for summary judgment regarding exhaustion of the administrative remedies, Plaintiff may raise any arguments in opposition at that time. Accordingly, Plaintiff’s request for judicial notice is denied.

IT IS SO ORDERED.

Dated: March 1, 2019

  

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UNITED STATES MAGISTRATE JUDGE