



1 Pursuant to the Prison Litigation Reform Act of 1996, “[n]o action shall be brought with  
2 respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner  
3 confined in any jail, prison, or other correctional facility until such administrative remedies as are  
4 available are exhausted.” 42 U.S.C. § 1997e(a). Prisoners are required to exhaust the available  
5 administrative remedies prior to filing suit. Jones v. Bock, 549 U.S. 199, 211 (2007); McKinney  
6 v. Carey, 311 F.3d 1198, 1199–1201 (9th Cir. 2002). Exhaustion is required regardless of the  
7 relief sought by the prisoner and regardless of the relief offered by the process, Booth v. Churner,  
8 532 U.S. 731, 741 (2001), and the exhaustion requirement applies to all suits relating to prison  
9 life, Porter v. Nussle, 435 U.S. 516, 532 (2002).

10 In rare cases where a failure to exhaust is clear from the face of the complaint, it may be  
11 dismissed for failure to state a claim. See, e.g., Albino v. Baca, 747 F.3d 1162, 1169 (9th Cir.  
12 2014); Medina v. Sacramento Cty. Sheriff’s Dep’t, No. 2:16-cv-0765 AC P, 2016 WL 6038181,  
13 at \*3 (E.D. Cal. Oct. 14, 2016) (“When it is clear from the face of the complaint and any attached  
14 exhibits that a plaintiff did not exhaust his available administrative remedies before commencing  
15 an action, the action may be dismissed on screening for failure to state a claim.”); Lucas v. Dir. of  
16 Dep’t. of Corrs., 2015 WL 1014037, at \*4 (E.D. Cal. Mar. 6, 2015) (relying on Albino and  
17 dismissing complaint without prejudice on screening due to plaintiff’s failure to exhaust  
18 administrative remedies prior to filing suit).

## 19 II. Discussion

20 In the complaint, Plaintiff indicates that he presented the facts in his complaint for review  
21 through the grievance procedure at his institution, noting Log # CHCF-D-17-04062. However,  
22 Plaintiff states that his appeal was rejected at the first formal level, and that he did not appeal his  
23 grievance to the highest level of appeal available to him. (ECF No. 1, pp. 1–2.) Plaintiff cites to  
24 Brown v. Valoff, 422 F.3d 926 (9th Cir. 2005) and states that “The Appeals System proved to be  
25 inadequate.” (Id.)

26 Plaintiff’s complaint also includes a copy of Log # CHCF-D-17-04062, as well as the  
27 response Plaintiff received at the first level. (Id. at 8–9, 12–16.) It appears that Plaintiff received  
28 a response for Log # CHCF-D-17-04062 on November 20, 2017, rejecting his appeal at the First

1 Level for failing to provide supporting documentation. (Id. at 12.) Plaintiff was advised to use  
2 the CDCR form 22 process, then to attach it to his CDCR form 602 within 30 days for further  
3 review. (Id.)

4 Based on these documents and Plaintiff's own statements, there is no indication that  
5 Plaintiff pursued his appeal beyond the first level, despite guidance from CDCR as to how he  
6 should proceed with the grievance process. Nor has Plaintiff provided any explanation for his  
7 failure to do so. Thus, it appears clearly on the face of the complaint that Plaintiff filed suit  
8 prematurely without first exhausting his administrative remedies in compliance with section  
9 1997e(a).

### 10 **III. Order and Recommendation**

11 Accordingly, the Clerk of the Court is DIRECTED to randomly assign a District Judge to  
12 this action.

13 Furthermore, it is HEREBY RECOMMENDED that this action be dismissed, without  
14 prejudice, based on Plaintiff's failure to exhaust administrative remedies prior to filing suit.

15 These findings and recommendations will be submitted to the United States District Judge  
16 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**  
17 **(14) days** after being served with these findings and recommendations, Plaintiff may file written  
18 objections with the Court. The document should be captioned "Objections to Magistrate Judge's  
19 Findings and Recommendations." Plaintiff is advised that failure to file objections within the  
20 specified time may result in the waiver of the "right to challenge the magistrate's factual  
21 findings" on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v.  
22 Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

23  
24 IT IS SO ORDERED.

25 Dated: June 5, 2018

26 /s/ Barbara A. McAuliffe  
27 UNITED STATES MAGISTRATE JUDGE  
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