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

ALLEN HAMMLER,)	Case No.: 1:19-cv-00373-SAB (PC)
)	
Plaintiff,)	
)	ORDER TO SHOW CAUSE WHY ACTION SHOULD NOT BE DISMISSED, WITHOUT PREJUDICE, FOR FAILURE TO EXHAUST THE ADMINISTRATIVE REMEDIES
v.)	
)	
CLARK, et.al.,)	
)	
Defendants.)	[ECF No. 1]
)	
)	
)	

Plaintiff Allen Hammler is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On January 3, 2019, Plaintiff filed the instant action in the United States District Court for the Eastern District of California, Sacramento Division. On March 21, 2019, the action was transferred to this Court.

**I.
EXHAUSTION OF ADMINISTRATIVE REMEDIES**

Pursuant to the PLRA, “[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). Prisoners are required to exhaust the available administrative remedies prior to filing suit. Jones v. Bock, 549 U.S. 199, 211 (2007); McKinney v. Carey, 311 F.3d 1198, 1199-1201 (9th Cir. 2002).

1 Exhaustion is required regardless of the relief sought by the prisoner and regardless of the relief
2 offered by the process, Booth v. Churner, 532 U.S. 731, 741 (2001), and the exhaustion requirement
3 applies to all suits relating to prison life, Porter v. Nussle, 435 U.S. 516, 532 (2002). Although the
4 “failure to exhaust is an affirmative defense under the PLRA,” a prisoner’s complaint may be subject to
5 dismissal for failure to state a claim when an affirmative defense appears on its face. Jones v. Bock,
6 549 U.S. at 202, 215; see also Albino v. Baca, 747 F.3d 1162, 1169 (9th Cir. 2014) (en banc) (noting
7 that where a prisoner’s failure to exhaust is clear from the fact of the complaint, his complaint is subject
8 to dismissal for failure to state a claim, even at the screening stage); Wyatt v. Terhune, 315 F.3d 1108,
9 1120 (9th Cir. 2003) (“A prisoner’s concession to nonexhaustion is a valid ground for dismissal[.]”),
10 overruled on other grounds by Albino, 747 F.3d at 1166.

11 In California, a prison inmate satisfies the administrative exhaustion requirement by following
12 the procedures set forth in Sections 3084.1 through 3084.8 of Title 15 of the CCR. An inmate “may
13 appeal any policy, decision, action, condition, or omission by the department or its staff that the inmate
14 . . . can demonstrate as having a material adverse effect upon his or her health, safety, or welfare.” Cal.
15 Code Regs. tit. 15, § 3084.1(a). The regulations require the prisoner to proceed through all three levels
16 of review. See Cal. Code Regs. tit. 15, § 3084.2(a). A decision at the third level of review, known as
17 the director’s level of review, is not appealable and constitutes the final level of administrative review.
18 Id.

19 With regard to exhaustion, Plaintiff checks the box “no” in response to the question of whether
20 there is an available administrative process at his institution, stating he “has filed complaint anyway.
21 (Compl. at 3, ECF No. 1.) Then, Plaintiff checks the box “yes” in response to whether he submitted an
22 administrative appeal on his claim, and Plaintiff crossed out the question of whether he sought relief at
23 the highest level of review. (Id.) In the body of his complaint, Plaintiff states that “having filed a 602
24 complaint that will take at lease [sic] six months to complete the process....” (Id. at 9-10.) It appears,
25 based on the face of the complaint, that Plaintiff has not fully exhausted available administrative
26 remedies prior to brining suit. Plaintiff’s allegations suggest that he ceased litigating his appeal, and did
27 not file an appeal to the highest level or receive a decision at that level prior to filing suit. Thus, it
28 appears Plaintiff filed suit prematurely without first exhausting his administrative remedies in

1 compliance with the PLRA, section 1997e(a). Plaintiff is again advised that if the Court concludes that
2 he failed to exhaust the administrative remedies, the dismissal will be without prejudice, to refile if
3 and when exhaustion of the administrative remedies is complete.

4 **III.**

5 **CONCLUSION**

6 Accordingly, it is HEREBY ORDERED that

7 1. Plaintiff must show cause in writing within **twenty-one (21) days** from the date of
8 service of this order why this action should not be dismissed, without prejudice, for failure to exhaust
9 prior to filing suit; and

10 2. The failure to comply with this order or to show good cause will result in a
11 recommendation to dismiss the action without prejudice.

12
13 IT IS SO ORDERED.

14 Dated: April 3, 2019



15 UNITED STATES MAGISTRATE JUDGE