



1 20.) No other objections were filed.

2 In his objections, Plaintiff does not argue that he completed the exhaustion requirement. He  
3 acknowledges that he started the exhaustion of administrative remedies process, and was granted  
4 partial relief. (ECF No. 19, p. 2.) He does not argue that he further appealed after being granted  
5 partial relief. Instead, Plaintiff argues that his case is an exceptional case where the administrative  
6 remedy is inadequate and any delay would cause irreparable injury and injustice. (ECF No. 20.)  
7 Plaintiff argues that while he was going through the administrative process, he was taken to the  
8 hospital for treatment for the medical condition which forms the basis of his claims, and while at  
9 the hospital, he was beaten in the head and choked in his hospital bed on June 16 because of this  
10 case and has been denied proper medical care by the defendant.

11 Plaintiff's objections are overruled. Plaintiff admits he did not exhaust his administrative  
12 remedies. Plaintiff does not argue that his administrative remedies effectively were unavailable to  
13 him. Rather, Plaintiff argues that while he was confined in his hospital bed on June 16, he was beat  
14 up. He does not allege it was defendant who injured him on June 16 or attribute any June 16  
15 wrongful conduct to defendant. He does not state how such injury on June 16 caused Plaintiff any  
16 inability to comply with Plaintiff's exhaustion requirement. The court notes that Plaintiff's  
17 complaint involves events in January 2019 through May 2019, and the complaint was filed on May 8,  
18 2019. Plaintiff does not say how or why the June 16 injury made his administrative remedies effectively  
19 unavailable.

20 Plaintiff's main argument is that an injustice will result if he is required to exhaust. The Court,  
21 however, is bound to follow the law and the law is that a prisoner's available administrative  
22 remedies must be exhausted before a court can decide the merits of a prisoner's complaint brought  
23 pursuant to § 1983. 42 U.S.C. § 1997e(a); see also Booth v. Churner, 532 U.S. 731, 738 (2001)  
24 ("The available remedy must be exhausted before a complaint under § 1983 may be entertained."  
25 (internal quotation marks removed)); Morris v. Moghaddam, No. 2:13-cv-0805 KJM KJN P, 2015  
26 WL 136033, at \*10 n.3 (E.D. Cal. Jan. 9, 2015).

27 Plaintiff argues that an injustice would occur if he were forced to exhaust his administrative  
28 remedies because he is not getting adequate treatment. As the U.S. Supreme Court recently

1 explained in Ross v. Blake, 136 S.Ct. 1850, 1857, 1859 (2016), regarding the Prison Litigation  
2 Reform Act of 1995 exhaustion requirement, the exceptions are extremely limited:

3  
4 [T]hat language is “mandatory”: An inmate “shall” bring “no action” (or said  
5 more conversationally, may not bring any action) absent exhaustion of available  
6 administrative remedies.... [T]hat edict contains one significant qualifier: the  
7 remedies must indeed be “available” to the prisoner. But aside from that exception,  
8 the PLRA's text suggests no limits on an inmate's obligation to exhaust—  
9 irrespective of any “special circumstances.”

10 Id. (internal citations omitted). Thus, arguments of any perceived injustice which would result  
11 from failing to exhaust is not an exception to the exhaustion requirement. Plaintiff must exhaust his  
12 administrative remedies before filing suit. Therefore, his objections are overruled.

13 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a  
14 *de novo* review of this case. Having carefully reviewed the entire file, including Plaintiff's  
15 objections, the Court finds that the Magistrate Judge's Findings and Recommendations are  
16 supported by the record and by proper analysis.

17 Accordingly, IT IS HEREBY ORDERED that:

- 18 1. The Findings and Recommendations issued on October 7, 2019, (ECF No. 18), are  
19 adopted in full;
- 20 2. The instant action is dismissed, without prejudice, for failure to exhaust  
21 administrative remedies; and
- 22 3. The Clerk of the Court is directed to terminate pending matters and close this case.

23 IT IS SO ORDERED.

24 Dated: November 21, 2019

25 /s/ Lawrence J. O'Neill  
26 UNITED STATES CHIEF DISTRICT JUDGE