1		
2		
3		
4		
5		
6		
7		
8	UNITED STATES DISTRICT COURT	
9	EASTERN DISTRICT OF CALIFORNIA	
10		
11	GUILLERMO TRUJILLO CRUZ,	Case No. 1:20-cv-01740-NONE-SKO (PC)
12	Plaintiff,	FINDINGS AND RECOMMENDATIONS TO DISMISS ACTION FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES
13	V.	
14	B. KIBLER, et al.,	14-DAY DEADLINE
15	Defendants.	
16		
17	Plaintiff Guillermo Trujillo Cruz, a state prisoner proceeding pro se, initiated this action	
18	on December 10, 2020. (Doc. 1.) Plaintiff alleges that Defendants failed to protect him from an	
19	attack by another inmate on November 14, 2020. (Id. at 3, 5, 6.) Plaintiff's complaint is dated	
20	November 20, 2020—only six days after the subject incident. (Id. at 7.) Given this short	
21	timeframe, Plaintiff did not appear to have exhausted his administrative remedies prior to filing	
22	suit.	
23	Therefore, on January 25, 2021, the Court issued an order to show cause why this action	
24	should not be dismissed for failure to exhaust. (Doc. 11.) Plaintiff filed a response to the order to	
25	show cause on February 11, 2021. (Doc. 13.) Plaintiff does not deny that he failed to exhaust. He	
26	instead contends that this action should not be dismissed because the California Department of	
27	Corrections and Rehabilitation (CDCR) has "failed to properly process all [grievances] from June	
28	2019." (Id.) The Court finds Plaintiff's ar	gument unavailing. For the reasons set forth below, the

1

2

## I. LEGAL STANDARD

Court recommends that this action be dismissed.

3 The Prison Litigation Reform Act (PLRA) provides that "[n]o action shall be brought with 4 respect to prison conditions under ... any ... Federal law ... by a prisoner confined in any jail, 5 prison, or other correctional facility until such administrative remedies as are available are 6 exhausted." 42 U.S.C. § 1997e(a). Exhaustion of administrative remedies is mandatory and 7 "unexhausted claims cannot be brought in court." Jones v. Bock, 549 U.S. 199, 211 (citation 8 omitted). Inmates are required to "complete the administrative review process in accordance with 9 the applicable procedural rules, including deadlines, as a precondition to bringing suit in federal 10 court." Woodford v. Ngo, 548 U.S. 81, 88, 93 (2006). The exhaustion requirement applies to all 11 inmate suits relating to prison life, Porter v. Nussle, 534 U.S. 516, 532 (2002), regardless of the 12 relief sought by the prisoner or offered by the administrative process, *Booth v. Churner*, 532 U.S. 13 731, 741 (2001).

Generally, failure to exhaust is an affirmative defense that the defendant must plead and prove. *Jones*, 549 U.S. at 204, 216. However, courts may dismiss a claim if failure to exhaust is clear on the face of the complaint. *See Albino v. Baca*, 747 F.3d 1162, 1166 (9th Cir. 2014).

17 **II.** 

## DISCUSSION

18 It is clear on the face of his complaint that Plaintiff failed to exhaust administrative 19 remedies prior to filing suit. Plaintiff nevertheless contends that this action should not be 20 dismissed because CDCR has "failed to properly process all [grievances] from June 2019." (Doc. 21 13 at 9.) It is unclear what Plaintiff means by "failed to properly process," but it is clear that he 22 does not mean that CDCR failed to respond to his grievances. Attached to his complaint are 23 responses from the CDCR Office of Appeals to two of Plaintiff's prior grievances. (Doc. 1 at 12, 24 27.) CDCR affirmed the cancellation of one grievance in May of 2020, and it constructively 25 denied the other due to time constraints in April of 2020. (Id.) Plaintiff exhausted the claims 26 underlying the latter grievance.

The Supreme Court has outlined an exception to the exhaustion requirement where
administrative remedies are "unavailable." *Ross v. Blake*, 136 S. Ct. at 1858-60. To be

2

1 "unavailable," the administrative process must (1) operate as a "simple dead end," (2) be so 2 "opaque" as to be "incapable of use," or (3) be thwarted by "prison administrators ... through 3 machination, misrepresentation, or intimidations." Id. at 1859-60. Plaintiff neither shows, nor 4 suggests that either of these situations apply. Rather, his claim that CDCR has "failed to properly 5 process" his grievances, coupled with examples where CDCR cancelled or denied his grievances, 6 suggests that he complains of the fact that his prior grievances were not granted. However, the 7 Supreme Court has not recognized a "futility" exception to the exhaustion requirement. *Booth*, 8 532 U.S. at 741 n.6.

As long as an administrative remedy was available, Plaintiff was required to exhaust it
prior to filing suit. Because he failed to do so with respect to the claims underlying this action,
Plaintiff may not pursue this action. Even if he has raised claims that are serious and would
otherwise entitle him to relief, "exhaustion is mandatory under the PLRA and ... unexhausted
claims cannot be brought in court." *Jones*, 549 U.S. at 211.

14

## III. CONCLUSION AND RECOMMENDATION

15 Plaintiff failed to exhaust his administrative remedies prior to initiating this action. 16 Accordingly, the Court **RECOMMENDS** that this action be **DISMISSED** without prejudice. 17 These Findings and Recommendations will be submitted to the United States District 18 Judge assigned to this case, pursuant to 28 U.S.C. § 636(b)(1). Within 14 days of the date of 19 service of these Findings and Recommendations, Plaintiff may file written objections with the 20 Court. The document should be captioned, "Objections to Magistrate Judge's Findings and 21 Recommendations." Failure to file objections within the specified time may result in waiver of his 22 rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. 23 Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

24

27

28

25 IT IS SO ORDERED.

26 Dated: February 16, 2021

1st . Sheila . K. Oberto

UNITED STATES MAGISTRATE JUDGE

3