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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

RUDIE ANTHONY JARAMILLO,  
Plaintiff,  
v.  
J. BURNES, et al.,  
Defendants.

Case No. 1:21-cv-00712-JLT (PC)  
**FINDINGS AND RECOMMENDATIONS  
TO DISMISS ACTION FOR FAILURE TO  
EXHAUST ADMINISTRATIVE REMEDIES**  
14-DAY DEADLINE  
Clerk of the Court to Assign a District Judge

Rudie Anthony Jaramillo, a state prisoner, alleges the defendant-correctional officers subjected him to excessive force and retaliation and failed to protect him from an attack by another inmate. (Doc. 1.) In his complaint, Plaintiff admits that he has not yet exhausted his administrative remedies. (*Id.* at 5, 7, 8.) Therefore, on October 22, 2021, the Court issued an order to show cause, within 21 days, why this action should not be dismissed for failure to exhaust administrative remedies prior to filing suit. (Doc. 13.) Although more than 21 days have passed, Plaintiff has failed to file a response to the order to show cause.

The Prison Litigation Reform Act provides that “[n]o action shall be brought with respect to prison conditions under . . . 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). Exhaustion of administrative remedies is mandatory and “unexhausted claims cannot be brought in court.” *Jones v. Bock*, 549 U.S. 199, 211 (citation omitted). The

1 exhaustion requirement applies to all inmate suits relating to prison life, *Porter v. Nussle*, 534  
2 U.S. 516, 532 (2002), regardless of the relief sought by the prisoner or offered by the  
3 administrative process, *Booth v. Churner*, 532 U.S. 731, 741 (2001). Inmates are required to  
4 “complete the administrative review process in accordance with the applicable procedural rules,  
5 including deadlines, as a precondition to bringing suit in federal court.” *Woodford v. Ngo*, 548  
6 U.S. 81, 88, 93 (2006). Generally, failure to exhaust is an affirmative defense that the defendant  
7 must plead and prove. *Jones*, 549 U.S. at 204, 216. However, courts may dismiss a claim if  
8 failure to exhaust is clear on the face of the complaint. *See Albino v. Baca*, 747 F.3d 1162, 1166  
9 (9th Cir. 2014).

10 It is clear on the face of his complaint that Plaintiff failed to exhaust administrative  
11 remedies prior to filing suit. Accordingly, the Court RECOMMENDS that this action be  
12 DISMISSED without prejudice. The Court DIRECTS the Clerk of the Court to assign a district  
13 judge to this action.

14 These Findings and Recommendations will be submitted to the United States District  
15 Judge assigned to this case, pursuant to 28 U.S.C. § 636(b)(1). **Within 14 days** of the date of  
16 service of these Findings and Recommendations, Plaintiff may file written objections with the  
17 Court. The document should be captioned, “Objections to Magistrate Judge’s Findings and  
18 Recommendations.” Plaintiff’s failure to file objections within the specified time may result in  
19 waiver of his rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing  
20 *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

21  
22 IT IS SO ORDERED.

23 Dated: **December 4, 2021**

**/s/ Jennifer L. Thurston**  
24 CHIEF UNITED STATES MAGISTRATE JUDGE  
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