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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSEPH TOWNSEND,

 Plaintiff,

 v.

T. COOK, et al.,

 Defendants.

No. 1:24-cv-01285 GSA (PC)

ORDER DIRECTING PLAINTIFF TO SHOW
CAUSE WHY THIS MATTER SHOULD NOT
BE SUMMARILY DISMISSED FOR
FAILURE TO EXHAUST
ADMINISTRATIVE REMEDIES

PLAINTIFF’S SHOWING OF CAUSE DUE
IN FOURTEEN DAYS

Plaintiff, a state prisoner proceeding pro se and in forma pauperis, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

For the reasons stated below, Plaintiff will be ordered to show cause why it should not be recommended that this matter be summarily dismissed for lack of jurisdiction given Plaintiff’s failure to exhaust administrative remedies prior to filing suit in this Court. Plaintiff will be given fourteen days to file the showing of cause.

I. RELEVANT FACTS

On October 22, 2024, Plaintiff’s complaint and his application to proceed in forma pauperis were docketed. ECF Nos. 1, 2. Two days later, Plaintiff’s six-month prison trust fund

1 account statement was docketed, and Plaintiff’s application to proceed in forma pauperis was
2 granted. ECF Nos. 6-7, respectively.

3 Plaintiff names T. Cook and A. Sanchez, both of whom are correctional officers at
4 California State Prison – Corcoran (“CSP-Corcoran”), as well as a John Doe as Defendants in
5 this action. See ECF No. 1 at 1, 4. In the complaint, Plaintiff alleges violations of right by
6 Defendants under the Americans with Disabilities Act,¹ as well as violations of right under the
7 Eighth and Fourteenth Amendment, i.e., failure to protect and cruel and unusual punishment,
8 stemming from events that occurred on September 14, 2024. See ECF No. 1 at 1-2, 5-7. He
9 seeks \$250,000.00 in compensatory damages; \$25,000.00 for pain and suffering, and \$25,000.00
10 for mental anguish. Id. at 8.

11 In the complaint, Plaintiff states that there is a grievance procedure available at CSP-
12 Corcoran. ECF No. 1 at 3. However, when Plaintiff is asked on the complaint form whether he
13 has completed the grievance procedure, Plaintiff states that he has not, that he is “still waiting for
14 a response.” Id. He provides no other information in response to the question.

15 II. DISCUSSION

16 A. Applicable Law

17 The claims of inmates who challenge their conditions of confinement are subject to the
18 Prison Litigation Reform Act (“PLRA”), 42 U.S.C. § 1997e(a). “The PLRA mandates that
19 inmates exhaust all available administrative remedies before filing ‘any suit challenging prison
20 conditions,’ including, but not limited to, suits under [Section] 1983.” Albino v. Baca, 747 F.3d
21 1162, 1171 (9th Cir. 2014) (brackets added) (quoting Woodford v. Ngo, 548 U.S. 81, 85 (2006)).

22 “Under § 1997e(a), the exhaustion requirement hinges on the ‘availab[ility]’ of
23 administrative remedies: An inmate . . . must exhaust available remedies, but need not exhaust
24 unavailable ones.” Ross v. Blake, 578 U.S. 632, 642 (2016) (brackets in original). In discussing
25 availability in Ross, the Supreme Court identified three circumstances in which administrative
26 remedies were unavailable: (1) where an administrative remedy “operates as a simple dead end”

27 ¹ Plaintiff states that he is visually impaired and been diagnosed as legally blind. See ECF No. 1
28 at 6.

1 in which officers are “unable or consistently unwilling to provide any relief to aggrieved
2 inmates;” (2) where an administrative scheme is “incapable of use” because “no ordinary prisoner
3 can discern or navigate it;” and (3) where “prison administrators thwart inmates from taking
4 advantage of a grievance process through machination, misrepresentation, or intimidation.” Ross,
5 136 S. Ct. at 1859-60. “[A]side from [the unavailability] exception, the PLRA’s text suggests no
6 limits on an inmate’s obligation to exhaust – irrespective of any ‘special circumstances.’ ” Id. at
7 1856. “[M]andatory exhaustion statutes like the PLRA establish mandatory exhaustion regimes,
8 foreclosing judicial discretion.” Id. at 1857.

9 B. Analysis

10 The PLRA requires that a prisoner exhaust administrative remedies before submitting any
11 papers to the federal courts. Vaden v. Summerhill, 449 F.3d 1047, 1048 (9th Cir. 2006). Plaintiff
12 clearly states in his complaint that he has not done this. See ECF No. 1 at 3. In addition, his only
13 reason for not having done so does not fall within any of the Ross exceptions. See id. Therefore,
14 Plaintiff’s complaint is improperly before this Court. See 42 U.S.C. § 1997e(a) (stating no action
15 can be brought by a prisoner under Section 1983 with respect to prison conditions until available
16 administrative remedies have been exhausted).

17 For these reasons, Plaintiff will be ordered to show cause why this matter should not be
18 summarily dismissed for failure to exhaust administrative remedies. He will be given fourteen
19 days to comply with this order.

20 Accordingly, IT IS HEREBY ORDERED that:

- 21 1. Plaintiff shall SHOW CAUSE why this matter should not be SUMMARILY
22 DISMISSED for failure to exhaust administrative remedies (see ECF No. 1 at 3), and
23 2. Plaintiff’s showing of cause shall be filed within fourteen days from the date of this
24 order.

25
26 IT IS SO ORDERED.

27 Dated: November 26, 2024

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE