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

BRYAN E. RANSOM,)	2:08-cv-01225-HDM-RAM
)	
Plaintiff,)	
)	ORDER
vs.)	
)	
ALBRITTON, et al.,)	
)	
Defendants.)	
_____)	

19 Plaintiff is a state prisoner proceeding pro se with a civil
20 rights action pursuant to 42 U.S.C. § 1983. Before the court is
21 the plaintiff's motion to vacate (#37) and motion for an extension
22 of time (#36), both filed on March 16, 2009.

23 Plaintiff moves to vacate this court's order of February 24,
24 2009, which granted in part defendant's motion to dismiss, on the
25 grounds that he was not served with a copy of the motion and only
26 learned of it upon receipt of the court's February 24, 2009, order.
27 He states that if given the chance he would argue that his second
28 claim for relief should not be dismissed for failure to exhaust

1 administrative remedies because there were no available
2 administrative remedies relative to that claim. Specifically, he
3 argues that decisions of the Departmental Review Board ("DRB") are
4 not appealable and conclude the inmate's departmental
5 administrative remedy. Plaintiff makes no argument regarding his
6 first claim for relief.

7 The court has reviewed the arguments and authority cited by
8 plaintiff in his motion to vacate, and reaffirms its February 24,
9 2009 decision granting in part defendants' motion to dismiss. As
10 noted in the court's prior order, "[n]o action shall be brought
11 with respect to prison conditions under section 1983 of this title,
12 or any other Federal law, by a prisoner confined in any jail,
13 prison, or other correctional facility until such administrative
14 remedies as are available are exhausted." 42 U.S.C. § 1997e(a).
15 Exhaustion is mandatory and is a prerequisite to all suits about
16 prison life. *Porter v. Nussle*, 534 U.S. 516, 524, 532 (2002).
17 Even assuming plaintiff was not required to file an appeal
18 regarding his second claim for relief, exhaustion of the claim
19 occurred no earlier than the time of the complained-of conduct,
20 which was after plaintiff initiated this action. Plaintiff's
21 second claim for relief was therefore not exhausted before he
22 initiated this action. Any opposition filed by the plaintiff would
23 not change the court's determination of this issue. Accordingly,
24 plaintiff's motion to vacate (#37) is denied. The proper procedure
25 is for plaintiff to initiate a new action based on the conduct
26 underlying his second claim for relief.

27 Defendants' motion to dismiss plaintiff's claim for injunctive
28 relief seeking to bar defendants from housing plaintiff in any

1 general population remains pending. The court has converted that
2 portion of defendants' motion into a motion for summary judgment.
3 Plaintiff's motion for an extension of time to respond to only that
4 remaining claim is granted. Plaintiff shall have up to and
5 including Thursday, April 30, 2009, in which to file any response
6 with respect to his claim for injunctive relief relative to his
7 placement in the general population and to counter any of the
8 evidence provided by the defendants.¹

9 Accordingly, IT IS ORDERED:

- 10 1. Plaintiff's motion to vacate is DENIED.
- 11 2. Plaintiff's motion for an extension of time is GRANTED
12 in part. Plaintiff shall have up to and including
13 Thursday, April 30, 2009, in which to file any response
14 with respect to his claim for injunctive relief relative
15 to his placement in the general population and to counter
16 any of the evidence provided by the defendants.
- 17 3. The clerk of the court is directed to serve on plaintiff
18 a copy of the defendant's motion to dismiss (#31).

19 DATED: This 10th day of April, 2009.

20 
21 _____
22 UNITED STATES DISTRICT JUDGE

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¹ Plaintiff was advised of the requirements for opposing a motion for
summary judgment in the court's order dated October 8, 2008.