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

CHRISTOPHER SCOTT RIDER,

Plaintiff,

No. CIV S-09-2675 DAD P

vs.

M.R. GOLDY, et al.,

Defendants.

ORDER AND

FINDINGS AND RECOMMENDATIONS

_____ /

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and has filed an application to proceed in forma pauperis under 28 U.S.C. § 1915. This proceeding was referred to the undersigned magistrate judge in accordance with Local Rule 302 and 28 U.S.C. § 636(b)(1).

PLAINTIFF’S COMPLAINT

In his complaint, plaintiff has identified High Desert State Prison Officers M.R. Goldy and E.A. Schwab as the defendants in this action. Plaintiff appears to allege that the defendants have harassed him, used unnecessary force against him, and issued him false rules violations because he has been charged as a sex offender. Plaintiff also appears to allege that the defendants have threatened to tell other inmates that he has been charged as a sex offender. In terms of relief, plaintiff requests injunctive relief and monetary damages. (Compl. at 1-6.)

1 **DISCUSSION**

2 On plaintiff's original complaint form, Question D.2 asks "Have you previously
3 sought and exhausted all forms of informal or formal relief from the proper administrative
4 officials regarding the acts alleged. . . .?" In the space provided for plaintiff to describe how he
5 sought relief and what results, if any, he obtained plaintiff explains that he filed a citizen's
6 complaint with regards to defendants' alleged conduct. He also states that he has written Internal
7 Affairs and the Federal Bureau of Investigation's Ombudsman, asking them to investigate
8 defendants' alleged conduct. (Compl. at 6.)

9 A prisoner's concession to nonexhaustion is a valid ground for dismissal of an
10 action. See Wyatt v. Terhune, 315 F.3d 1108, 1120 (9th Cir. 2003). Plaintiff is advised that
11 filing a citizen's complaint does not serve to properly exhaust his administrative remedies.
12 Similarly, sending a letter to an internal affairs department or to an FBI ombudsman does not
13 satisfy the exhaustion requirement. As noted above, the California Department of Corrections
14 and Rehabilitation has an established administrative grievance system and a prescribed grievance
15 process that plaintiff must complete prior to bringing a § 1983 action on his claims. See Vaden
16 v. Summerhill, 449 F.3d 1047, 1051 (9th Cir. 2006) (a prisoner "may initiate litigation in federal
17 court only after the administrative process ends and leaves his grievances unredressed"); see
18 also Cotton v. Runnels, No. CIV S-06-1107 GEB DAD P, 2009 WL 1158941 at *7 n.4 (E.D.
19 Cal. Apr. 29, 2009) ("plaintiff's filing of various citizen's complaints . . . do not serve as a proper
20 exhaustion of his administrative remedies"); Evans v. Woodford, No. CIV F-06-01250 ALA (P),
21 2008 WL 5114653 at *2 (E.D. Cal. Dec. 4, 2008) ("citizen's complaint may not be used by a
22 prisoner to comport with controlling law that requires proper exhaustion: as defined here by the
23 CDCR."); McCoy v. Schirmer, No. S-05-0165 DFL DAD P, 2006 WL 845630 at *3 (E.D. Cal.
24 March 30, 2006) ("The filing of a citizen's complaint . . . cannot constitute exhaustion of
25 available administrative remedies for California state prisoners since state law provides an
26 inmate appeal system specifically for prisoners.").

1 If a court concludes, as it does here, that a prisoner has not exhausted
2 administrative remedies, “the proper remedy is dismissal of the claim without prejudice.” Wyatt,
3 315 F.3d at 1120. Given plaintiff’s acknowledgment of non-exhaustion, the undersigned will
4 recommend that this action be dismissed without prejudice.¹

5 **CONCLUSION**

6 IT IS HEREBY ORDERED that the Clerk of the Court is directed to randomly
7 assign a United States District Judge to this action.

8 IT IS HEREBY RECOMMENDED that:

- 9 1. Plaintiff’s motion to proceed in forma pauperis (Doc. No. 2) be denied; and
10 2. This action be dismissed without prejudice for failure to exhaust administrative
11 remedies prior to bringing this action.

12 These findings and recommendations are submitted to the United States District
13 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-
14 one days after being served with these findings and recommendations, plaintiff may file written
15 objections with the court. A document containing objections should be titled “Objections to
16 Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file
17 objections within the specified time may waive the right to appeal the District Court’s order. See
18 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

19 DATED: February 11, 2010.

20
21 
22 _____
23 DALE A. DROZD
24 UNITED STATES MAGISTRATE JUDGE

22 DAD:9
23 ride2675.efr

24 ¹ Plaintiff is informed that dismissal without prejudice will permit him to file a new
25 action upon exhaustion of the prison grievance process. If plaintiff decides to file a new action,
26 he should not include this case number on the new complaint. In addition, the new complaint
should be accompanied by a properly completed, updated application to proceed in forma
pauperis.