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

JAMES L. JEFFERSON,

Plaintiff,

No. 2: 09-cv-3008 GEB CKD P

vs.

A. PEREZ, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

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I. INTRODUCTION

Plaintiff is a state prisoner proceeding with a civil rights complaint filed pursuant to 42 U.S.C. § 1983. This action is proceeding on plaintiff’s complaint against defendants A. Perez, Providence and Pompey, who are correctional officers. Plaintiff alleges that defendant Perez violated his Eighth Amendment right to be free from cruel and unusual punishment when she spread a rumor that plaintiff was a “snitch.” Plaintiff’s claims against defendant Providence are that he falsified an interview with plaintiff and that he was placed in administrative segregation by Providence because he failed to drop a complaint against Pompey. Finally, plaintiff claims that Pompey roughed him up. Defendants have filed a motion for summary judgment arguing that plaintiff failed to exhaust his administrative remedies. Additionally, defendants argue that there is no evidence to support the claims made against the defendants

1 and/or the defendants are entitled to qualified immunity. For the following reasons, it will be
2 recommended that this action be dismissed without prejudice due to plaintiff's failure to exhaust
3 administrative remedies.

4 II. EXHAUSTION OF ADMINISTRATIVE REMEDIES

5 The Prison Litigation Reform Act ("PLRA") provides that, "[n]o action shall be
6 brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by
7 a prisoner confined in any jail, prison, or other correctional facility until such administrative
8 remedies as are available are exhausted." 42 U.S.C. § 1997e(a). Pursuant to this rule, prisoners
9 must exhaust their administrative remedies regardless of the relief they seek, i.e., whether
10 injunctive relief or money damages, even though the latter is unavailable pursuant to the
11 administrative grievance process. See *Booth v. Churner*, 532 U.S. 731, 741 (2001). Exhaustion
12 also requires that the prisoner complete the administrative review process in accordance with all
13 applicable procedural rules. See *Woodford v. Ngo*, 548 U.S. 81, 90-91 (2006).

14 The PLRA requires that administrative remedies be exhausted prior to filing suit.
15 See *McKinney v. Carey*, 311 F.3d 1198, 1199 (9th Cir. 2002). However, the exhaustion
16 requirement is not jurisdictional, but an affirmative defense that may be raised by a defendant in
17 a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b). See *Jones v. Bock*, 549
18 U.S. 199, 216 (2007) ("inmates are not required to specially plead or demonstrate exhaustion in
19 their complaints"); *Wyatt v. Terhune*, 315 F.3d 1108, 1117-19 (9th Cir. 2003) (failure to exhaust
20 is an affirmative defense). Defendants bear the burden of raising and proving the absence of
21 exhaustion, and their failure to do so waives the defense. See *id.* at 1119.

22 "In deciding a motion to dismiss for a failure to exhaust nonjudicial remedies, the
23 court may look beyond the pleadings and decide disputed issues of fact." *Id.* at 1119-20 "[f] the
24 district court looks beyond the pleadings to a factual record in deciding the motion to dismiss for
25 failure to exhaust – a procedure closely analogous to summary judgment – then the court must
26 assure that [the prisoner] has fair notice of his opportunity to develop a record." *Id.* at 1120 n.14.

1 When the district court concludes that the prisoner has not exhausted administrative remedies on
2 a claim, “the proper remedy is dismissal of the claim without prejudice.” *Id.* at 1120; see also
3 *Lira v. Herrera*, 427 F.3d 1164, 1170 (9th Cir. 2005) (“mixed” complaints may proceed on
4 exhausted claims). Thus, “if a complaint contains both good and bad claims, the court proceeds
5 with the good and leaves the bad.” *Jones*, 549 U.S. at 221.

6 “The level of detail in an administrative grievance necessary to properly exhaust a
7 claim is determined by the prison’s applicable grievance procedures.” *Id.* at 218. In California,
8 prisoners are required to lodge their administrative complaint on a CDC Form 602, which
9 requires only that the prisoner “describe the problem and action requested.” CAL.CODE REGS. tit.
10 15, § 3084.2(a). In *Griffin v. Arpaio*, 557 F.3d 1117 (9th Cir. 2009), the Ninth Circuit adopted
11 the standard enunciated by the Seventh Circuit, which provides that “when a prison’s grievance
12 procedures are silent or incomplete as to factual specificity, a grievance suffices if it alerts the
13 prison to the nature of the wrong for which redress is sought.” *Id.* at 1120 (reviewing Arizona
14 procedures) (internal quotation marks and citation omitted). Thus, in California, “[a] grievance
15 need not include legal terminology or legal theories unless they are in some way needed to
16 provide notice of the harm being grieved. A grievance also need not contain every fact necessary
17 to prove each element of an eventual legal claim. The primary purpose of a grievance is to alert
18 the prison to a problem and facilitate its resolution, not to lay groundwork for litigation.” *Id.*; see
19 also *Morton v. Hall*, 599 F.3d 942, 946 (9th Cir. 2010).

20 “[E]xhaustion is not per se inadequate simply because an individual later sued was
21 not named in the grievances.” *Jones*, 549 U.S. at 219. It is nonetheless appropriate to require
22 that a prisoner demonstrate, through the administrative grievance process and consistent with the
23 PLRA, that he has standing to pursue his claims against a particular defendant. “[A]t an
24 irreducible minimum, Art[icle] III [of the United States Constitution] requires the party who
25 invokes the court’s authority to ‘show that he personally has suffered some actual or threatened
26 injury as a result of the putatively illegal conduct of the defendant.’ ” *Valley Forge Christian*

1 Coll. v. Ams. United for Separation of Church & State, Inc., 454 U.S. 464, 472 (1982).

2 III. DISCUSSION

3 A. Perez

4 Plaintiff's claim against defendant Perez is that she told other inmates that
5 plaintiff was a snitch which endangered his life. (See Third Am. Complaint at p. 2-3; Pl.'s
6 Opp'n Defs.' Mot. Summ. J. at p. 6 ("Mr. Jefferson's complaint alleges that Defendant Perez
7 informed other inmates that he was a snitch which endangered Mr. Jefferson's life.") The
8 prison had an inmate grievance system in place whereby the inmate appeal had to be submitted
9 within fifteen working days of the event or decision that was the subject of the appeal. During
10 the applicable time period of plaintiff's claim against Perez, plaintiff submitted five inmate
11 appeals. (See Defs.' Statement Undisputed Facts ("DUP") ¶ 11 ("A review of Jefferson's inmate
12 appeal records found that in June through August 2009, Jefferson submitted five inmate appeals
13 that were processed for further review.") In an appeal that was received for second level review
14 on June 18, 2009 (log number CMF-M-0901607), Jefferson complained that an Officer Desouza
15 took his copy of Jet Magazine. (See DUP ¶ 12.) In an appeal that was received for second level
16 review on July 21, 2009 (log number CMF-M-09-01853), Jefferson complained about elections
17 to the Men's Advisory Council. (See id. ¶ 13.) In an appeal that was received for second level
18 review on August 5, 2009 (log number CMF-M-02017), Jefferson complained that Perez had
19 told him about her lawsuits, that she practiced favoritism towards inmates, and that Perez called
20 him a "trouble maker faggot." (See id. ¶ 14.) In an appeal received for first level review on
21 August 20, 2009 (log number CMF-M-09-02133), Jefferson complained that he had wrongly
22 been placed into administrative segregation. (See id. ¶ 15.) Additionally, in an appeal received
23 for first level review on August 24, 2009 (log number CMF-M-09-02158), Jefferson again
24 complained that he had been wrongly placed in administrative segregation and that it was due to
25 discrimination. (See id. ¶ 16.)

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1 The grievances that petitioner filed did not alert the prison to the nature of the
2 wrong for which redress is sought with respect to Perez purportedly telling inmates that plaintiff
3 was a snitch. See Griffin, 557 F.3d at 1120 (standard for specificity required for prison grievance
4 is “if it alerts the prison to the nature of the wrong for which redress is sought”). Accordingly,
5 plaintiff did not exhaust his administrative remedies with respect to his claim against Perez.

6 B. Providence

7 Plaintiff asserts that his constitutional rights were violated when Providence
8 falsified documents related to an interview and investigation and kept plaintiff in administrative
9 segregation because he would not dismiss a grievance against defendant Pompey. (See Third
10 Am. Complaint at p. 3; Pl.’s Opp’n Defs.’ Mot. Summ. J. at p. 6.) On August 11, 2009, plaintiff
11 was placed into administrative segregation by Correctional Lieutenant Providence. (See DUP ¶
12 19.) The basis for this was that information had been received by Providence that Jefferson was
13 causing unrest between the inmate population and Perez. (See id. ¶ 20.) Specifically, Jefferson
14 had been identified as the source of rumors and false allegations involving the Crips, the Bloods,
15 and Perez. (See id. ¶ 21.) The information was contained in a memorandum written that day by
16 Perez. (See id. ¶ 22.) Though confidential, Jefferson obtained a copy of the memorandum and
17 later attached a heavily marked-up copy of it to an inmate appeal. (See id. ¶ 23.) The placement
18 into administrative segregation was reviewed and approved the following day by Facility Captain
19 Flores. (See id. ¶ 26.) Jefferson’s placement in administrative segregation was then reviewed by
20 the Institutional Classification Committee (ICC) on August 18, 2009. (See id. ¶ 27.) It was
21 noted that an investigation into staff safety concerns was then pending. (See id. ¶ 28.)
22 Providence was not a member of this ICC. (See id. ¶ 30.) The ICC reviewed plaintiff’s
23 placement into administrative segregation again on September 1, 2009 and although the
24 information that Jefferson was the source of rumors and false allegations involving the Crips, the
25 Bloods, and Perez, was not deemed reliable, there were safety concerns and it was recommended
26 that Jefferson be transferred to another institution. (See id. ¶ 31, 33.) Providence was not a

1 member of this ICC. (See *id.* ¶ 35.) Jefferson submitted two inmate appeals regarding this
2 decision to place him into administrative segregation. (See *id.* ¶ 36.) In appeal log number
3 CMF-M-09-02133, Jefferson complained that Perez falsified safety concerns in retaliation for an
4 earlier appeal filed against Perez so that Jefferson would be placed into administrative
5 segregation. (See *id.* ¶ 37.) In appeal log number CMF-M-09-02158, Jefferson complained that
6 he was wrongly placed into administrative segregation based upon false rumors and
7 discrimination. (See *id.* ¶ 39.) He alleges in the appeal that it was in retaliation for filing an
8 earlier appeal against Perez. (See *id.* ¶ 40.) The appeal does not allege that Providence placed
9 plaintiff into administrative segregation in retaliation for an appeal filed against Pompey. (See
10 *id.* ¶ 41.)

11 The grievances that plaintiff filed as outlined above did not alert the prison to the
12 nature of the wrongs for which redress is sought with respect to Providence. See *Griffin*, 557
13 F.3d at 1120 (setting forth level of specificity required when filing a prison grievance). They did
14 not alert the prison to the fact that plaintiff asserted that Providence falsified interviews or that he
15 placed plaintiff in administrative segregation due to an appeal plaintiff filed against Pompey.
16 Accordingly, plaintiff did not exhaust his administrative remedies with respect to his claims
17 against Providence.

18 C. Pompey

19 Plaintiff alleges in his third amended complaint that defendant Pompey physically
20 assaulted him. (See *Third Am. Complaint* at p. 3; *Pl.’s Opp’n Defs.’ Mot. Summ. J.* at p. 6 (“The
21 complaint alleges that Defendant Pompey physically assaulted Mr. Jefferson.”).) During his
22 deposition, plaintiff alleged that Pompey beat him up in the first week of October 2009. (See
23 *DUP* ¶ 42.) Plaintiff stated that he was in his cell, on the top bunk, when Pompey entered the
24 cell pulled the mattress and plaintiff onto the floor, kicked plaintiff in the stomach and breasts,
25 smacked plaintiff in the face, and kicked him in the back. (See *id.* ¶ 43.) A review of Jefferson’s
26 inmate appeal records found that in 2009 plaintiff submitted two inmate appeals complaining

1 about Pompey or making reference to him. (See id. ¶ 49.) In an appeal received for second level
2 review on September 16, 2009 (log number CMF-M-09-02412), Jefferson complained that
3 Pompey and others were sabotaging his food. (See id. ¶ 50.) In an appeal received for informal
4 level review on October 19, 2009 (log number CMF-M-09-02851), Jefferson complained that
5 Captain Flores had not provided him with a copy of his administrative order and he wished for
6 Flores to interview him “on the C/O Pompey situation.” (See id. ¶ 51.) In addition to the appeal
7 received for informal level review on October 19, 2009, a review of Jefferson’s inmate appeal
8 records found that in October and November 2009, Jefferson submitted five other inmate
9 appeals. (See id. ¶ 52.) In appeal received for first level review on October 12, 2009 (log
10 number CMF-M-09-02591), Jefferson complained he was not getting his meals. (See id. ¶ 53.)
11 In an appeal received for second level review on October 21, 2009 (log number CMF-M-09-
12 02680), Jefferson complained that his personal property has been misplaced. (See id. ¶ 54.) In
13 an appeal received for first formal level review on October 29, 2009 (log number CMF-M-09-
14 02732), Jefferson complained about his placement into administrative segregation and not being
15 given an opportunity to speak to the ICC. (See id. ¶ 55.) In an appeal received for second level
16 review on November 3, 2009 (log number CMF-M-09-02789), Jefferson complained that Sgt.
17 Gibson was preventing him from moving to another unit and insulting Jefferson’s sexual
18 orientation. (See id. ¶ 56.) In an appeal for informal level review on November 19, 2009 (log
19 number CMF-M-09-3064), Jefferson complained that the mail room was holding his Jet
20 Magazine. (See id. ¶ 58.) None of these inmate appeals submitted by Jefferson concern
21 allegations that Pompey subjected plaintiff to excessive force in October 2009. (See id. ¶ 58.)

22 The grievances that plaintiff filed as outlined above did not alert the prison to the
23 nature of the wrong with respect to Pompey purportedly physically assaulting plaintiff. See
24 Griffin, 557 F.3d 1120 (setting forth requisite standard of specificity needed when filing a prison
25 grievance). Accordingly, plaintiff did not exhaust his administrative remedies with respect to his
26 claim against Pompey.

1 As plaintiff failed to exhaust his administrative remedies with respect to his
2 claims against the defendants, it is unnecessary to analyze defendants' alternative arguments that
3 there is no evidence to support the claims made against them and/or that they are entitled to
4 qualified immunity on plaintiff's claims.

5 IV. CONCLUSION

6 Accordingly, IT IS HEREBY RECOMMENDED that defendants motion for
7 summary judgment (Dkt. No. 81), construed in part as an unenumerated Rule 12(b) motion to
8 dismiss, be granted without prejudice on the ground that plaintiff failed to exhaust administrative
9 remedies.

10 These findings and recommendations are submitted to the United States District
11 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
12 days after being served with these findings and recommendations, any party may file written
13 objections with the court and serve a copy on all parties. Such a document should be captioned
14 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
15 shall be served and filed within fourteen days after service of the objections. The parties are
16 advised that failure to file objections within the specified time may waive the right to appeal the
17 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

18 Dated: September 28, 2012

19 
20 CAROLYN K. DELANEY
21 UNITED STATES MAGISTRATE JUDGE