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

ELBERT LEE VAUGHT, IV,

Plaintiff,

No. 2: 10-cv-1558 KJM KJN P

vs.

E. SANDOVAL, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

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I. Introduction

Plaintiff is a state prisoner proceeding without counsel and in forma pauperis, with an action filed pursuant to 42 U.S.C. § 1983. Pending before the court is defendant’s April 18, 2011 motion to dismiss filed on the grounds that plaintiff failed to exhaust administrative remedies. After carefully reviewing the record, the undersigned concludes that defendant’s motion to dismiss should be granted.

A. Legal Standard re Exhaustion

The Prison Litigation Reform Act of 1995 (“PLRA”) amended 42 U.S.C. § 1997e to provide that “[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or 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).

1 Exhaustion in prisoner cases covered by § 1997e(a) is mandatory. Porter v. Nussle, 534 U.S.  
2 516, 524 (2002). Exhaustion is a prerequisite for all prisoner suits regarding conditions of  
3 confinement, whether they involve general circumstances or particular episodes, and whether  
4 they allege excessive force or some other wrong. Porter, 534 U.S. at 532.

5 Exhaustion of all “available” remedies is mandatory; those remedies need not  
6 meet federal standards, nor must they be “plain, speedy and effective.” Id. at 524; Booth v.  
7 Churner, 532 U.S. 731, 740 n.5 (2001). Even when the prisoner seeks relief not available in  
8 grievance proceedings, notably money damages, exhaustion is a prerequisite to suit. Booth, 532  
9 U.S. at 741. A prisoner “seeking only money damages must complete a prison administrative  
10 process that could provide some sort of relief on the complaint stated, but no money.” Id. at 734.  
11 The fact that the administrative procedure cannot result in the particular form of relief requested  
12 by the prisoner does not excuse exhaustion because some sort of relief or responsive action may  
13 result from the grievance. See Booth, 532 U.S. at 737; see also Porter, 534 U.S. at 525 (purposes  
14 of exhaustion requirement include allowing prison to take responsive action, filtering out  
15 frivolous cases, and creating administrative records).

16 A prisoner need not exhaust further levels of review once he has either received  
17 all the remedies that are “available” at an intermediate level of review, or has been reliably  
18 informed by an administrator that no more remedies are available. Brown v. Valoff, 422 F.3d  
19 926, 934-35 (9th Cir. 2005). Because there can be no absence of exhaustion unless some relief  
20 remains available, a movant claiming lack of exhaustion must demonstrate that pertinent relief  
21 remained available, whether at unexhausted levels or through awaiting the results of the relief  
22 already granted as a result of that process. Brown, 422 F.3d at 936-37.

23 As noted above, the PLRA requires proper exhaustion of administrative remedies.  
24 Woodford v. Ngo, 548 U.S. 81, 83-84 (2006). “Proper exhaustion demands compliance with an  
25 agency’s deadlines and other critical procedural rules because no adjudicative system can  
26 function effectively without imposing some orderly structure on the course of its proceedings.”

1 Id. at 90-91. Thus, compliance with prison grievance procedures is required by the PLRA to  
2 properly exhaust. Id. The PLRA’s exhaustion requirement cannot be satisfied “by filing an  
3 untimely or otherwise procedurally defective administrative grievance or appeal.” Id. at 83-84.

4           The State of California provides its prisoners the right to appeal administratively  
5 “any departmental decision, action, condition or policy which they can demonstrate as having an  
6 adverse effect upon their welfare.” Cal. Code Regs. tit. 15, § 3084.1(a) (2010). It also provides  
7 them the right to file appeals alleging misconduct by correctional officers and officials. Id. at  
8 § 3084.1(e). In order to exhaust available administrative remedies within this system, a prisoner  
9 must proceed through several levels of appeal: (1) informal resolution; (2) formal written appeal  
10 on a 602 inmate appeal form; (3) second level appeal to the institution head or designee; and  
11 (4) third level appeal to the Director of the California Department of Corrections and  
12 Rehabilitation. Barry v. Ratelle, 985 F.Supp. 1235, 1237 (S.D. Cal. 1997) (citing Cal.Code  
13 Regs. tit. 15, § 3084.5). A final decision from the Director’s level of review satisfies the  
14 exhaustion requirement under § 1997e(a). Id. at 1237-38.

15           Non-exhaustion under § 1997e(a) is an affirmative defense which should be  
16 brought by defendants in an unenumerated motion to dismiss under Federal Rule of Civil  
17 Procedure 12(b). Wyatt v. Terhune, 315 F.3d 1108, 1119 (9th Cir. 2003). Moreover, the court  
18 may look beyond the pleadings to determine whether a plaintiff exhausted his administrative  
19 remedies. Id. at 1119-20.

20           B. Analysis

21           This action is proceeding on the first amended complaint filed August 25, 2010,  
22 as to defendant Villanueva. Plaintiff alleges that he was ordered transferred to the California  
23 Substance Abuse Treatment Facility (“SATF”) from High Desert State Prison (“HDSP”) despite  
24 having an enemy at SATF. Plaintiff alleges that defendant Villanueva was involved in that  
25 decision.

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1 Defendant argues that plaintiff did not file any administrative grievances  
2 challenging his transfer on grounds of an alleged enemy at SATF. Defendant states that while  
3 plaintiff filed a grievance challenging his transfer on other grounds, he made no claims regarding  
4 an enemy. Plaintiff challenged his transfer on grounds that the classification committee applied  
5 “underground regulations.” (Dkt. No. 39-3 at 30.) Plaintiff also argued that his own behavior  
6 should not have been used as a reason for the transfer. (Id.)

7 In his opposition, plaintiff contends that he filed an appeal challenging his transfer  
8 to SATF on the grounds raised in this action, but did not receive a response from prison officials.  
9 Attached as an exhibit to plaintiff’s opposition is a copy of the first level grievance plaintiff  
10 claims prison officials did not respond to. (Dkt. No. 40 at 12.) In this grievance, plaintiff  
11 challenged his transfer to SATF on grounds that he had a documented enemy. (Id.) However,  
12 plaintiff signed this grievance on June 27, 2010. (Id.)

13 Prisoners are required to exhaust their administrative remedies *prior to* filing suit.  
14 Jones v. Bock, 549 U.S. 199, 211 (2007) (emphasis added.) Plaintiff filed this action on June 21,  
15 2010. (Dkt. No. 1.) At that time, plaintiff had not yet filed his first grievance challenging his  
16 transfer on the grounds alleged in this action. Even assuming prison officials did not respond to  
17 the grievance filed by plaintiff on June 27, 2010, plaintiff filed this grievance after he filed this  
18 action. Because plaintiff did not exhaust his administrative remedies regarding the claims raised  
19 in this action prior to filing this action, defendant’s motion to dismiss should be granted.

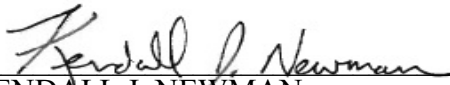
20 In his opposition, plaintiff suggests that his earlier grievances challenging his  
21 transfer were sufficient to exhaust the claims raised in this action. The undersigned disagrees.  
22 Plaintiff’s earlier grievances challenging his transfer did not put prison officials on notice that he  
23 was challenging his transfer on grounds that he had a potential enemy at SATF. See Griffin v.  
24 Arpaio, 557 F.3d 1117, 1120 (9th Cir. 2009) (“[A] grievance suffices if it alerts the prison to the  
25 nature of the wrong for which redress is sought.” (citation omitted)).

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1                   Accordingly, IT IS HEREBY RECOMMENDED that defendant’s motion to  
2 dismiss for failure to exhaust administrative remedies (Dkt. No. 39) be granted.

3                   These findings and recommendations are submitted to the United States District  
4 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-  
5 one days after being served with these findings and recommendations, any party may file written  
6 objections with the court and serve a copy on all parties. Such a document should be captioned  
7 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the  
8 objections shall be filed and served within fourteen days after service of the objections. The  
9 parties are advised that failure to file objections within the specified time may waive the right to  
10 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

11 DATED: May 6, 2011

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14 KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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