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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UMAR SHAHID,
Plaintiff,
v.
I. ALDAZ et al.,
Defendants.

No. 2:14-cv-0454 KJN P (TEMP)

ORDER AND
FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner, proceeding pro se, with a civil rights action seeking relief under 42 U.S.C. § 1983. Pending before the court is a motion for summary judgment filed on behalf of defendants Rodriguez and Thompson based on plaintiff’s alleged failure to exhaust his administrative remedies prior to filing suit as required. Plaintiff filed an opposition to the motion, and defendants filed a reply.

BACKGROUND

Plaintiff is proceeding on a second amended complaint against defendants Rodriguez and Thompson. At screening, then-Magistrate Judge Dale A. Drozd found that plaintiff’s complaint appeared to state a cognizable claim against defendant Rodriguez for his alleged interference with plaintiff’s right to marry. In addition, Judge Drozd found that plaintiff’s complaint appeared to state a cognizable claim against defendant Thompson for retaliation. (Doc. No. 15) The court then ordered service of plaintiff’s complaint on defendants. (Doc. No. 17) On December 8,

1 2014, defendants filed an answer to the complaint. (Doc. No. 20) On May 26, 2015, defendants
2 filed the pending motion for summary judgment. (Doc. No. 26)

3 THE EXHAUSTION REQUIREMENT

4 By the Prison Litigation Reform Act of 1995 (“PLRA”), Congress amended 42 U.S.C. §
5 1997e to provide that “[n]o action shall be brought with respect to prison conditions under section
6 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other
7 correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C.
8 § 1997e(a). The exhaustion requirement “applies to all inmate suits about prison life, whether
9 they involve general circumstances or particular episodes, and whether they allege excessive
10 force or some other wrong.” Porter v. Nussle, 534 U.S. 516, 532 (2002).

11 The United States Supreme Court has ruled that exhaustion of prison administrative
12 procedures is mandated regardless of the relief offered through such procedures. See Booth v.
13 Churner, 532 U.S. 731, 741 (2001). The Supreme Court has also cautioned against reading
14 futility or other exceptions into the statutory exhaustion requirement. See id. at 741 n.6.
15 Moreover, because proper exhaustion is necessary, a prisoner cannot satisfy the PLRA exhaustion
16 requirement by filing an untimely or otherwise procedurally defective administrative grievance or
17 appeal. See Woodford v. Ngo, 548 U.S. 81, 90-93 (2006). “[T]o properly exhaust administrative
18 remedies prisoners ‘must complete the administrative review process in accordance with the
19 applicable procedural rules,’ [] - rules that are defined not by the PLRA, but by the prison
20 grievance process itself.” Jones v. Bock, 549 U.S. 199, 218 (2007) (quoting Woodford, 548 U.S.
21 at 88). See also Marella v. Terhune, 568 F.3d 1024, 1027 (9th Cir. 2009) (“The California prison
22 system’s requirements ‘define the boundaries of proper exhaustion.’”).

23 In California, prisoners may appeal “any policy, decision, action, condition, or omission
24 by the department or its staff that the inmate or parolee can demonstrate as having a material
25 adverse effect upon his or her health, safety, or welfare.” Cal. Code Regs. tit. 15, § 3084.1(a).
26 Most appeals progress through three levels of review. See id. § 3084.7. The third level of review
27 constitutes the decision of the Secretary of the California Department of Corrections and
28 Rehabilitation and exhausts a prisoner’s administrative remedies. See id. § 3084.7(d)(3). A

1 California prisoner is required to submit an inmate appeal at the appropriate level and proceed to
2 the highest level of review available to him. Butler v. Adams, 397 F.3d 1181, 1183 (9th Cir.
3 2005); Bennett v. King, 293 F.3d 1096, 1098 (9th Cir. 2002).

4 A court may excuse a prisoner from complying with the PLRA’s exhaustion requirement
5 if he establishes that the existing administrative remedies were effectively rendered unavailable to
6 him. See Albino v. Baca, 747 F.3d 1162, 1172-73 (9th Cir. 2014). For example, where prison
7 officials improperly screen out inmate grievances, they can render administrative remedies
8 effectively unavailable. See Sapp v. Kimbrell, 623 F.3d 813, 823 (9th Cir. 2010). In such a case,
9 “the inmate cannot pursue the necessary sequence of appeals” Id. See also Nunez v.
10 Duncan, 591 F.3d 1217, 1226 (9th Cir. 2010) (excusing an inmate’s failure to exhaust because he
11 was precluded from exhausting his administrative remedies by a warden’s mistaken instruction to
12 him that a particular unavailable document was needed for him to pursue his inmate appeal);
13 Marella, 568 F.3d 1024 (excusing an inmate’s failure to exhaust because he did not have access to
14 the necessary grievance forms to timely file his grievance).

15 The PLRA exhaustion requirement is not jurisdictional but rather creates an affirmative
16 defense that defendants must plead and prove. See Jones, 549 U.S. at 216 (“[I]nmates are not
17 required to specially plead or demonstrate exhaustion in their complaints.”); Albino, 747 F.3d at
18 1168. A defendant may move for dismissal under Federal Rule of Civil Procedure 12(b)(6) “[i]n
19 the rare event” that a prisoner’s failure to exhaust is clear on the face of the complaint. Albino,
20 747 F.3d at 1168 & 1169. More typically, defendants are required to move for summary
21 judgment under Federal Rule of Civil Procedure 56 and produce probative evidence that proves a
22 prisoner’s failure to exhaust. See id. at 1166. Specifically, “the defendant’s burden is to prove
23 that there was an available administrative remedy, and that the prisoner did not exhaust that
24 available remedy.” Id. at 1172. If the defendant carries that burden, “the prisoner has the burden
25 of production. That is, the burden shifts to the prisoner to come forward with evidence showing
26 that there is something in his particular case that made the existing and generally available
27 administrative remedies effectively unavailable to him.” Id. If the undisputed evidence viewed
28 in the light most favorable to the prisoner demonstrates a failure to exhaust, the court should grant

1 defendant's motion for summary judgment. Id. at 1166. On the other hand, if there are material
2 facts in dispute, the court should deny defendant's motion summary judgment. Id.

3 **DEFENDANTS' STATEMENT OF UNDISPUTED FACTS AND EVIDENCE**

4 In support of the pending motion for summary judgment based upon petitioner's alleged
5 failure to exhaust administrative remedies prior to filing suit, defense counsel submitted a
6 statement of undisputed facts supported by citations to plaintiff's second amended complaint,
7 plaintiff's responses to defendants' discovery requests, and declarations signed under penalty of
8 perjury by Appeals Coordinator D. Clark and Acting Chief of the Office of Appeals M. Voong.
9 Attached to Clark and Voong's declarations are copies of plaintiff's relevant inmate appeals and
10 prison officials' responses thereto. The evidence submitted by defense counsel in support of the
11 pending motion for summary judgment establishes the following.

12 Plaintiff is a state prisoner in the custody of the California Department of Corrections and
13 Rehabilitation ("CDCR"). At all relevant times to this lawsuit, plaintiff was incarcerated at High
14 Desert State Prison ("HDSP") in Susanville, California. On August 14, 2014, plaintiff filed his
15 second amended complaint in this action. The court screened the complaint and found that it
16 appeared to state a cognizable claim against defendant Rodriguez for interference with the right to
17 marry. Specifically, plaintiff claims in his complaint that defendant Rodriguez violated his First
18 Amendment right to marry by refusing to process his marriage application that his fiancé Aurielle
19 Walton submitted to the institution. The court also found that plaintiff's complaint appeared to
20 state a cognizable claim against defendant Thompson for retaliation. Specifically, plaintiff claims
21 that defendant Thompson retaliated against him by lodging disciplinary charges against him for
22 falsifying CDCR 602 grievances. (Defs.' SUDF 1-4, Pl.'s Sec. Am. Compl., Screening Order
23 (August 14, 2014).)

24 On November 20, 2013, plaintiff submitted Appeal Log No. HDSP-C-13-03602 to prison
25 officials at HDSP. Therein, he asked for the "status of his marriage application." The appeal
26 explained that his fiancée sent in a marriage application on October 17, 2013, and that she had left
27 several messages "on the marriage coordinator's phone" but had not heard back. In response to
28 this appeal, Sergeant Rodriguez interviewed plaintiff on January 8, 2014, and informed him that

1 his marriage application was complete and that a wedding date had been set. Prison officials
2 granted plaintiff's Appeal Log. No. HDSP-C-13-03602 at the first level. According to plaintiff,
3 Appeal Log No. HDSP-C-13-03602 exhausted his administrative remedies related to his right to
4 marry allegations against defendant Rodriguez. Plaintiff submitted several other unrelated
5 appeals to prison officials in 2013 and 2014. (Defs.' SUDF 13-17, Clark Decl. Exs. A-D,
6 Doering Decl. Ex. B at 2-3, Voong Decl. Exs. A & B.)

7 On May 26, 2014, plaintiff submitted Appeal Log No. HDSP-C-14-01693 asking for
8 unnamed staff to be reprimanded for endangering his safety by placing him in a cell with a
9 mentally unstable inmate. Plaintiff explained that on May 23, 2013, an unnamed third watch
10 Sergeant forced him to accept an inmate who was homicidal and suicidal. Plaintiff also stated
11 that two unnamed officers told him that he had to take the cellmate because he had been
12 previously written up for falsification of a staff complaint. Plaintiff believed he was assigned this
13 cellmate in retaliation for litigation against prison staff. Prison officials partially granted Appeal
14 Log No. HDSP-C-14-01693 at the first level of review insofar as plaintiff requested not to be
15 placed with the homicidal/suicidal inmate. Plaintiff did not submit Appeal Log No. HDSP-C-14-
16 01693 to the second level for review. According to plaintiff, Appeal Log No. HDSP-C-14-01693
17 exhausted his administrative remedies as to his retaliation claim against defendant Thompson.
18 Plaintiff submitted several other unrelated appeals to prison officials in 2013 and 2014. (Defs.'
19 SUDF 18-22, Clark Decl. Exs. A-F, Doering Decl. Ex. B, Voong Decl. Exs. A & B.)

20 ANALYSIS

21 In the pending motion for summary judgment, defense counsel argues that plaintiff failed
22 to properly exhaust his administrative remedies prior to filing suit. (Defs.' Mem. of P. & A. at 5-
23 10.) Specifically, counsel argues that plaintiff failed to identify the defendants in his inmate
24 appeals as required, and he failed to include facts in his inmate appeals to put prison officials on
25 notice of the claims he now asserts against defendants in this civil rights action. (*Id.*) The court
26 addresses defense counsel's arguments with respect to each of plaintiff's claims in turn.

27 First, with respect to plaintiff's right to marry claim, the court finds that plaintiff properly
28 exhausted this claim with Appeal Log. No. HDSP-C-13-03602. As an initial matter, the parties

1 do not dispute that plaintiff submitted Appeal Log. No. HDSP-C-13-03602 to prison officials
2 asking for the status of his marriage application. In the appeal, plaintiff wrote:

3 On October 17th my fiancée sent in a marriage application. She has
4 left several messages on the marriage coordinators phone seeking
5 information into the status of the approval process. I have sent a
6 request but we havent [sic] received any response.

7 (Clark Decl. Ex. D.) Defendant Rodriguez interviewed plaintiff in connection with the appeal
8 and told him that his marriage application was complete and prison officials had set a wedding
9 date. (Id.) On January 8, 2014, Associate Warden St. Andre granted plaintiff's appeal. (Id.)

10 Contrary to defense counsel's argument, plaintiff's failure to name defendant Rodriguez
11 in Appeal Log. No. HDSP-C-13-03602 is not dispositive on the issue of exhaustion in this case.
12 Cal. Code Regs. tit. 15, § 3084.2(a)(3) provides:

13 The inmate or parolee shall list all staff member(s) involved and
14 shall describe their involvement in the issue. To assist in the
15 identification of staff members, the inmate or parolee shall include
16 the staff member's last name, first initial, title or position, if known,
17 and the dates of the staff member's involvement in the issue under
18 appeal. If the inmate or parolee does not have the requested
19 identifying information about the staff member(s), he or she shall
20 provide any other available information that would assist the
21 appeals coordinator in making a reasonable attempt to identify the
22 staff member(s) in question.

23 Cal. Code Regs. tit. 15, § 3084.2

24 Although plaintiff did not name defendant Rodriguez in his appeal, he identified the
25 marriage coordinators at HDSP as the individuals involved with his complaint. In this regard, the
26 undersigned finds that plaintiff provided sufficient information to "assist the appeals coordinator
27 in making a reasonable attempt to identify the staff member(s) in question" in accordance with
28 Section 3084.2(a)(3).

29 In addition, this court disagrees with defense counsel's narrow reading of Appeal Log.
30 No. HDSP-C-13-03602 and finds that plaintiff provided prison officials with sufficient
31 information in his appeal to alert the prison of the nature of the wrong for which he sought
32 redress. See McCollum v. Cal. Dep't of Corrs. & Rehab., 647 F.3d 870, 876 (9th Cir. 2011). As
33 described above, in Appeal Log. No. HDSP-C-13-03602, plaintiff complained that his fiancée

1 had sent their marriage application to the prison, and both he and his fiancée had requested but
2 had not received a response from prison officials about the application. (Clark Decl. Ex. D.) He
3 asked prison officials to inform him of the status of his marriage application as soon as possible.
4 (Id.) These allegations “provide enough information . . . to allow prison officials to take
5 appropriate responsive measures” and are sufficient to satisfy the exhaustion requirement. See
6 Griffin v. Arpaio, 557 F.3d 1117, 1121 (9th Cir. 2009). Indeed, the Ninth Circuit has made clear
7 that a prisoner does not need to allege every fact necessary to state or prove a legal claim in his
8 inmate appeal. Id. at 1120.

9 Accordingly, for all of the foregoing reasons, the undersigned finds that defendants have
10 not carried their burden of proving that plaintiff failed to exhaust his First Amendment right-to-
11 marry claim, and therefore, defendants are not entitled to summary judgment on the claim.

12 Turning now to plaintiff’s retaliation claim against defendant Thompson, the court finds
13 that plaintiff failed to properly exhaust his claim with Appeal Log. No. HDSP-C-13-03602. As
14 an initial matter, the parties do not dispute that plaintiff submitted Appeal Log No. HDSP-C-14-
15 01693 and asked for unnamed staff to be reprimanded for endangering his safety by placing him
16 with a mentally unstable inmate. (Clark Decl. Ex. F.) Plaintiff explained that two officers told
17 him he had to accept the cellmate “because I had been written up for falsification of documents
18 specifically a staff complaint.” (Id.) Plaintiff stated “I believe this action was taken against me as
19 retaliation for me litigating against staff.” (Id.) On June 15, 2014, Associate Warden Wagner
20 partially granted plaintiff’s appeal and explained that prison officials would not place plaintiff in
21 a cell with an inmate requesting protective custody. (Id.) Associate Warden Wagner informed
22 plaintiff that if he was not satisfied with the decision he could appeal to the second level of
23 review. (Id.) Plaintiff did not pursue the appeal further. (Clark Decl. Ex. A.)

24 This court finds persuasive defense counsel’s argument that Appeal Log. No. HDSP-C-
25 14-01693 does not serve to exhaust plaintiff’s retaliation claim against defendant Thompson.
26 Specifically, in Appeal Log. No. HDSP-C-14-01693, plaintiff failed to identify defendant
27 Thompson as the staff person involved in his complaint, and he failed to provide the appeals
28 coordinator with sufficient information to make a reasonable attempt to identify the defendant as

1 required by Cal. Code Regs. tit. 15, § 3084.2(a)(3). (Clark Decl. Ex. F.) Moreover, in Appeal
2 Log. No. HDSP-C-14-01693, plaintiff complained about retaliation in the form of being placed in
3 a cell with a homicidal and suicidal inmate. He did not complain about defendant Thompson
4 retaliating against him by lodging disciplinary charges against him. (Id.) In this regard, this court
5 finds that plaintiff's allegations in Appeal Log. No. HDSP-C-14-01693 are not enough to satisfy
6 the exhaustion requirement for the retaliation claim he now asserts in this civil rights action. See
7 McCollum, 647 F.3d at 876. Finally, although plaintiff submitted other inmate appeals during the
8 relevant time period, none of them serve to exhaust his retaliation claim against defendant
9 Thompson because these appeals were unrelated to plaintiff's allegations against the defendant.
10 (Clark Decl. Exs. A-C & E, Voong Decl. Exs. A & B.)

11 Accordingly, where, as here, the undisputed evidence viewed in the light most favorable
12 to the plaintiff demonstrates that he failed to exhaust his retaliation claim and is not excused from
13 complying with the exhaustion requirement, the undersigned concludes that defendants are
14 entitled to summary judgment on this claim.

15 **OTHER MATTERS**

16 Also pending before the court are defendants' evidentiary objections to a declaration of
17 one Gregory Downs that plaintiff filed in support of his opposition to defendants' motion for
18 summary judgment. Defendants have also moved to strike the declaration. Defendants are
19 advised that the court did not rely on the declaration in reaching the findings and
20 recommendations herein, so the court declines to rule defendants' evidentiary objections and will
21 deny defendants' motion to strike as unnecessary.

22 **CONCLUSION**

23 IT IS HEREBY ORDERED that:

- 24 1. Defendants' motion to strike (Doc. No. 32) is denied as unnecessary; and
- 25 2. The Clerk of the Court is directed to randomly assign a United States District Judge to
26 this action.

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IT IS HEREBY RECOMMENDED that:

1. The motion for summary judgment filed on behalf of defendants Rodriguez and Thompson be granted in part and denied in part as follow:

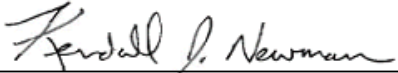
a. Defendants’ motion for summary judgment based on plaintiff’s failure to exhaust administrative remedies prior to filing suit as required (Doc. No. 96) be denied with respect to plaintiff’s right-to-marry claim against defendant Rodriguez;

b. Defendants’ motion for summary judgment based on plaintiff’s failure to exhaust administrative remedies prior to filing suit as required (Doc. No. 96) be granted with respect to plaintiff’s retaliation claim against defendant Thompson; and

2. Defendant Thompson be dismissed from this action without prejudice.

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

Dated: November 10, 2015


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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