





1 the first, second, or third formal levels of review. (Id. at 2.) Plaintiff also concedes in his  
2 complaint that he has not appealed to the highest level of appeal available to him through the  
3 administrative appeal process. (Id.)

4 It is well established that “[a] prisoner’s concession to nonexhaustion is a valid ground for  
5 dismissal.” Wyatt v. Terhune, 315 F.3d 1108, 1120 (9th Cir. 2003), overruled on other grounds  
6 by Albino, 747 F.3d 1162 (9th Cir. 2014). See also Sorce v. Garikpaetiti, Civil No. 14-CV-0327  
7 BEN (JMA), (S.D. Cal. June 2, 2014) (relying on the decision in Albino and dismissing the  
8 complaint on screening because “it is clear from the face of [plaintiff’s] pleading that he has  
9 conceded that he failed to exhaust all available administrative remedies . . . before he commenced  
10 this action”). Accordingly, due to plaintiff’s conceded failure to exhaust his administrative  
11 remedies the court will dismiss plaintiff’s complaint without prejudice.<sup>1</sup>

#### 12 CONCLUSION

13 In accordance with the above, IT IS HEREBY ORDERED that:

- 14 1. Plaintiff’s motion to proceed in forma pauperis (Doc. No. 7) is denied; and
- 15 2. This action is dismissed without prejudice due to plaintiff’s failure to exhaust available  
16 administrative remedies prior to filing suit as required.

17 Dated: March 5, 2015

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20 DALE A. DROZD  
21 UNITED STATES MAGISTRATE JUDGE

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28 <sup>1</sup> Plaintiff has consented to Magistrate Judge jurisdiction over this action pursuant to 28 U.S.C. §  
636. (Doc. Nos. 8 & 17)