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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DONALD WILLIAMS,  
Plaintiff,  
v.  
E. BAKER, et al.,  
Defendants.

No. 2:15-cv-1155 MCE CKD P

FINDINGS AND RECOMMENDATIONS

Plaintiff is proceeding pro se with an action for violation of civil rights under 42 U.S.C. § 1983. Plaintiff’s remaining claims arise under the Eighth Amendment against defendants Baker, Ramirez, and Delgado. Defendants Ramirez and Baker have filed a motion for summary judgment which has been joined by defendant Delgado. Defendants assert that plaintiff failed to exhaust administrative remedies before bringing this action as he is required to do under 42 U.S.C. § 1997(e)(a).

In his amended complaint (ECF No. 21), plaintiff alleges that on December 2, 2013, he was stabbed by three inmates with weapons resembling ice picks. Plaintiff alleges the attack was the result of inmates obtaining information from defendants suggesting that plaintiff was a confidential informant regarding the potentially illegal acts of other prisoners.

Section 1997(e)(a) of Title 42 of the United States Code provides that “[n]o action shall be brought with respect to prison conditions under section 1983 of this title, . . . until such

1 administrative remedies as are available are exhausted.” 42 U.S.C. § 1997(e)(a). Administrative  
2 procedures generally are exhausted with respect to the California prisoner grievance process once  
3 the third level of review is complete. The third level of review constitutes the decision of the  
4 Secretary of the California Department of Corrections and Rehabilitation (CDCR). Cal. Code  
5 Regs. tit. 15, § 3084.7.

6 The exhaustion requirement demands “proper” exhaustion. Woodford v. Ngo, 548 U.S.  
7 81, 90-91 (20016). In order to “properly exhaust” administrative remedies the prisoner must  
8 generally comply with the prison’s procedural rules throughout the administrative process. Jones  
9 v. Bock, 218 U.S. 199, 218 (2006).

10 If undisputed evidence viewed in the light most favorable to the prisoner / plaintiff shows  
11 a failure to exhaust, a defendant is entitled to summary judgment under Rule 56 of the Federal  
12 Rules of Civil Procedure. Albino v. Baca, 747 F.3d 1162, 1166 (9th Cir. 2014). If there is at  
13 least a genuine issue of material fact as to whether there was proper exhaustion, the motion for  
14 summary judgment must be denied. See Fed R. Civ P. 56(a).

15 After reviewing the parties’ briefs, and the evidence attached thereto, it appears that  
16 plaintiff submitted two grievances in which plaintiff complained that the actions of correctional  
17 staff led to his being attacked on December 2, 2103.<sup>1</sup> The first grievance, identified by the  
18 number 13-03274, was submitted by plaintiff on December 22, 2013. ECF No. 40-4 at 22. The  
19 grievance was initially rejected at the first level because plaintiff failed to identify the correctional  
20 officers or staff that provided the information to inmates which resulted in plaintiff being  
21 attacked. Id. at 26. In response to the notice of rejection, plaintiff indicated that it was defendant  
22 Baker who supplied inmates with confidential information. Id. The grievance was then accepted  
23 at the first level and referred to the Office of Internal Affairs. Id. at 27. Plaintiff was informed  
24 that if he wished to exhaust administrative remedies with respect to the issues in his grievance he  
25 still had to “appeal through all levels of appeal.” Id. He was also told that, through the grievance  
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27 <sup>1</sup> Plaintiff attaches to his opposition evidence indicating he submitted several grievances which  
28 are at least somewhat related to the claims remaining in this action. The grievances not addressed  
herein, however, do not directly concern any remaining claim.

1 on file, administrative remedies would not be deemed exhausted with respect to any issues against  
2 persons other than defendant Baker. Id. Plaintiff filed an appeal to the second level which was  
3 rejected on March 17, 2014 because plaintiff attempted to add new issues. Id. at 28. Plaintiff  
4 submitted his appeal to the second level a second time refusing to delete any of the information he  
5 added in his first submission. ECF No. 53 at 43. The appeal was rejected on June 2, 2014 for the  
6 same reason it was rejected the first time. ECF No. 53 at 47. On June 12, 2014, plaintiff  
7 submitted his appeal to the second level a third time, this time deleting all new issues raised. Id.  
8 In response, the appeal was cancelled by the second level as untimely because the third  
9 submission was not submitted within 30 days of the initial rejection, as required under 15 Cal.  
10 Code Regs. 3084.6(c)(10). ECF No. 40-4 at 29.

11 As indicated above, in order to properly exhaust administrative remedies, a prisoner must  
12 generally comply with all procedural rules during the grievance process including deadlines.  
13 Woodford, 548 U.S. at 90-91. The cancellation of grievance 13-03274 at the second level was  
14 the result of plaintiff's failure to comply with procedural rules which were made clear to him.  
15 Because plaintiff fails to point to anything suggesting he should be excused from failing to  
16 comply with any particular rule, the court finds that grievance 13-03274 did not serve to exhaust  
17 administrative remedies with respect to any claim remaining in this action.

18 The second grievance, identified by the number 14-02400, was initially submitted on  
19 August 13, 2014. In this grievance, plaintiff asserted that he was stabbed on December 2, 2013  
20 due at least in part to defendants Baker and Delgado providing inmates with information  
21 indicating plaintiff had informed correctional staff about an impending attack on Correctional  
22 Officer Fong. ECF No. 40-4 at 16. On April 30, 2015 the grievance was cancelled at the third  
23 level of review because it was not submitted within 30 days of plaintiff's being attacked as  
24 required by 15 Cal. Code Regs. § 3084.8.<sup>2</sup> ECF No. 40-4 at 20. Again, prisoners generally must  
25 comply with the procedural rules applicable to a prisoner grievance process, including deadlines,  
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27 <sup>2</sup> Plaintiff asserts that under 15 Cal. Code Regs. § 3391 he has one year to submit an appeal  
28 regarding employee misconduct. ECF No. 53 at 3-4. However, it is explicitly stated in that  
regulation that it does not apply to complaints brought by inmates.

1 Woodford, 548 U.S. at 90-91. Because plaintiff fails to point to any reason why CDCR's  
2 enforcement of its deadline regarding the submission of grievances should not be respected, the  
3 court finds the grievance submitted August 13, 2014 did not properly exhaust administrative  
4 remedies with respect to any of the remaining claims in this action.


5 In conclusion, because undisputed evidence shows that plaintiff did not properly exhaust  
6 available administrative remedies with respect to his remaining claims before bringing suit,  
7 defendants' motion for summary judgment should be granted.<sup>3</sup>

8 Accordingly, IT IS HEREBY RECOMMENDED that:

- 9 1. Defendants' motion for summary judgment (ECF No. 40) be granted;
- 10 2. Plaintiff's amended complaint be dismissed for failure to exhaust available  
11 administrative remedies prior to filing suit; and
- 12 3. This case be closed.

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

21 Dated: November 28, 2016

  
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CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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25 <sup>3</sup> The court notes that on October 24, 2016, well after the completion of briefing with respect to  
26 defendants' motion for summary judgment, plaintiff filed a document in which he asks that the  
27 court consider three additional exhibits in support of his opposition. Two of the attached exhibits,  
28 exhibits A and C, were already attached to plaintiff's opposition. ECF No. 53 at 53 & 60-61.  
The court has considered exhibit B and finds that it is not material to the court's findings above.