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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LISA BELYEW,
Plaintiff,
v.
A. DUCH, *et al.*,
Defendants.

Case No. 2:17-cv-01213-JAM-JDP (PC)
FINDINGS AND RECOMMENDATIONS
THAT DEFENDANTS’ MOTION FOR
SUMMARY JUDGMENT BE GRANTED
ECF No. 53
OBJECTIONS DUE WITHIN FOURTEEN
DAYS
ORDER THAT PLAINTIFF’S MOTION FOR
AN EXTENSION OF TIME TO FILE A
SUPPLEMENTAL RESPONSE BE DENIED
ECF No. 71

Plaintiff Lisa Belyew is a state prisoner proceeding without counsel in this civil rights action brought under 42 U.S.C. § 1983. She alleges that, during her confinement in the Butte County Jail—from December 24, 2016, to September 21, 2017, and from November 20, 2017, to April 12, 2018—several prison officials slammed doors in her housing unit in retaliation for her having filed grievances and lawsuits. ECF No. 11 at 4. She complains that this “sadistic technique” deprived her of sleep, caused headaches, and triggered her post-traumatic stress disorder. *Id.* In a May 2019 screening order, the court found that plaintiff’s allegations stated a potentially cognizable claim of unconstitutional conditions of confinement under the Fourteenth Amendment against defendants Moreland, Callas, Smith, Trott, and Webber. ECF No. 14. The

1 court also found that defendants Duch and Jones, both captains at the Butte County Jail, were
2 potentially liable for their failure to supervise. *Id.*

3 Defendants have filed a motion for summary judgment, arguing that plaintiff failed to
4 exhaust her administrative remedies before filing this suit. ECF No. 53. I agree and recommend
5 granting defendants' motion for summary judgment.

6 Plaintiff also filed a request for an extension of time to file a response to defendants'
7 supplemental reply brief. ECF No. 71. For the reasons below, I find that she has not shown
8 adequate cause, and I order that this request be denied.

9 **Legal Standard**

10 A motion for summary judgment will be granted only when "the pleadings, depositions,
11 answers to interrogatories, and admissions on file, together with the affidavits, if any, show that
12 there is no genuine issue as to any material fact and that the moving party is entitled to a
13 judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *see* Fed. R.
14 Civ. P. 56. The moving party bears the burden of establishing that there is no genuine issue of
15 material fact. *See Celotex*, 477 U.S. at 322-23. If the moving party meets that burden by
16 "presenting evidence which, if uncontradicted, would entitle it to a directed verdict at trial, [Fed.
17 R. Civ. P. 56(e)(2)] shifts to [the nonmoving party] the burden of presenting specific facts
18 showing that such contradiction is possible." *British Airways Bd. v. Boeing Co.*, 585 F.2d 946,
19 950-52 (9th Cir. 1978).

20 Each party's position must be supported by (1) citations to particular portions of materials
21 in the record, including but not limited to depositions, documents, declarations, or discovery; or
22 (2) argument showing that the materials cited do not establish the presence or absence of a
23 genuine factual dispute or that the opposing party cannot produce admissible evidence to support
24 its position. *See* Fed. R. Civ. P. 56(c)(1). The court can consider other materials in the record not
25 cited by the parties, but it is not required to do so. *See* Fed. R. Civ. P. 56(c)(3); *Carmen v. San*
26 *Francisco Unified School Dist.*, 237 F.3d 1026, 1031 (9th Cir. 2001); *see also Simmons v. Navajo*
27 *County, Ariz.*, 609 F.3d 1011, 1017 (9th Cir. 2010).

28 The court must apply standards consistent with Rule 56 to determine whether the moving

1 party has demonstrated there to be no genuine issue of material fact and that judgment is
2 appropriate as a matter of law. *See Henry v. Gill Indus., Inc.*, 983 F.2d 943, 950 (9th Cir. 1993).
3 “[A] court ruling on a motion for summary judgment may not engage in credibility
4 determinations or the weighing of evidence.” *Manley v. Rowley*, 847 F.3d 705, 711 (9th Cir.
5 2017) (citation omitted). The evidence must be viewed “in the light most favorable to the
6 nonmoving party” and “all justifiable inferences” must be drawn in favor of the nonmoving party.
7 *Orr v. Bank of America, NT & SA*, 285 F.3d 764, 772 (9th Cir. 2002); *Addisu v. Fred Meyer, Inc.*,
8 198 F.3d 1130, 1134 (9th Cir. 2000).

9 **PLRA Exhaustion**

10 Under the Prison Litigation Reform Act of 1995, “[n]o action shall be brought with
11 respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner
12 confined in any jail, prison, or other correctional facility until such administrative remedies as are
13 available are exhausted.” 42 U.S.C. § 1997e(a). The Supreme Court has made clear that “[t]he
14 benefits of exhaustion can be realized only if the prison grievance system is given a fair
15 opportunity to consider the grievance,” and further noted that “[t]he prison grievance system will
16 not have such an opportunity unless the grievant complies with the system's critical procedural
17 rules.” *Woodford v. Ngo*, 548 U.S. 81, 95 (2006). In this case, the grievance system of the Butte
18 County Jail is applicable. *See* ECF No. 53-4 at 67-79. The PLRA recognizes no exception to the
19 exhaustion requirement, and the court may not recognize a new exception. *See Ross v. Blake*, 136
20 S. Ct. 1850, 1862 (2016). The one significant qualifier is that “the remedies must indeed be
21 ‘available’ to the prisoner.” *Id.* at 1856.

22 As an initial matter, defendants have shown that Butte County Jail has an available
23 grievance system. The Butte County Jail handbook—which was provided to plaintiff—describes
24 the process for filing and appealing administrative remedies. *See* ECF No. 53-4 at 23-24, 67, 77-
25 79. If a detainee is dissatisfied with the disposition of a grievance, he or she is instructed to check
26 a box on the grievance form indicating that it has not been satisfactorily resolved. *Id.* at 77-78.
27 To exhaust available remedies at the Butte County Jail, a detainee must appeal a grievance
28 through three levels of review. *Id.*

1 I find that plaintiff did not exhaust her available administrative remedies before filing suit.
2 Plaintiff filed two grievances—Inmate Grievance Forms 17-0552 and 17-0758—in which she
3 complained of prison officials slamming doors and creating excessive noise. *Id.* at 70, 93. Both
4 grievances were administratively closed at the first level of review because they were vague and
5 lacked necessary information like the date, time, and names of the offending officers. *Id.*
6 Defendants attest that plaintiff neither appealed these decisions nor filed new grievances
7 correcting the identified deficiencies. *Id.* The two exhibited grievance forms corroborate this
8 claim: the spaces designated for second- and third-level reviews are blank, and plaintiff appears
9 not to have checked the boxes indicating her dissatisfaction with the outcome of the first-level
10 review. *Id.* at 101, 104. The record indicates that plaintiff filed no other relevant grievances.
11 Accordingly, defendants have met their initial burden of demonstrating that plaintiff failed to
12 exhaust her administrative remedies.

13 In her November 8, 2021, opposition, plaintiff contends that she “exhausted [her]
14 administrative remedies on multiple claims against the various defendants.” ECF No. 69; *see*
15 *also* ECF No. 63. Plaintiff has not, however, provided sufficient evidence to support this claim.
16 She neither identifies other relevant grievances nor points to a record of appealing either 17-0552
17 or 17-0758; indeed, she does not even specifically claim that these grievances were appealed. *See*
18 ECF Nos. 63, 69. Such vague and conclusory assertions are insufficient to rebut defendants’
19 showing. *See F.T.C. v. Publ’g Clearing House, Inc.*, 104 F.3d 1168, 1171 (9th Cir. 1997) (“A
20 conclusory, self-serving affidavit, lacking detailed facts and any supporting evidence, is
21 insufficient to create a genuine issue of material fact.”).

22 Plaintiff could be understood as arguing that her failure to exhaust should be excused on
23 the grounds that the appeals process was not “available as a practical matter.” *Williams v.*
24 *Paramo*, 775 F.3d 1182, 1191 (9th Cir. 2015) (internal citations omitted). In plaintiff’s sworn
25 response to defendants’ statement of undisputed facts, she wrote, “I’m not ‘allowed’ to check a
26 box that I’m not satisfied and there is no appeal process for a denied grievance that I’m aware of.”
27 *See* ECF No. 58 at 6. This raises the question of whether the administrative process was “so
28 opaque that it [was], practically speaking, incapable of use.” *Ross*, 136 S. Ct. at 1859. The

1 record demonstrates, however, that plaintiff successfully exhausted other grievances; and, in
2 response to a request for admissions, she admitted both that Butte County Jail provided access to
3 the inmate grievance procedures and that she was aware of the “inmate grievance process.” *See*
4 ECF No. 53-4 at 129, 148, 164. Since plaintiff has not pointed to other evidence that the system
5 was incapable of use, she has not shown that her failure to exhaust should be excused. *Cf.*
6 *Williams*, 775 F.3d at 1191 (holding that a plaintiff met her burden of showing that further
7 appeals were not available by attesting that two prison officials expressly refused to file her
8 appeals). Accordingly, I find that plaintiff did not exhaust her administrative remedies before
9 filing suit and recommend granting summary judgment to defendants.¹

10 **Motion for Extension of Time**

11 Defendants filed their motion for summary judgment on July 9, 2021. ECF No. 53.
12 Plaintiff requested, and the court granted, a sixty-day extension to file an opposition. *See* ECF
13 Nos. 57, 59. Shortly thereafter, plaintiff filed an additional motion for an extension, seeking an
14 additional 180 days to respond to defendants’ motion. ECF No. 60. While that request was
15 pending, plaintiff filed an opposition to defendants’ motion for summary judgment, ECF No. 63,
16 and defendants filed their reply, ECF No. 64, in response to which plaintiff filed an additional
17 motion for an extension, ECF No. 66. Although plaintiff failed to demonstrate good cause for
18 either requested extension and had already had over three months to prepare her response, I
19 granted her a brief extension—until December 6, 2021—to complete her supplemental
20 opposition. ECF No. 68. I cautioned plaintiff that, absent a showing of extraordinary cause, no
21 further extensions would be granted. *Id.* at 2. On November 8, 2021, plaintiff filed her
22 supplemental opposition to defendants’ motion for summary judgment, ECF No. 69, and
23 defendants filed a supplemental reply, ECF No. 70. Finally, on December 6, 2021, plaintiff filed
24 a new motion seeking yet another extension, this time to file a sur-reply to defendants’
25 supplemental reply, ECF No. 71; this motion is now before the court.

26 Eastern District Local Rule 230(*l*) requires a non-moving party to file an opposition not

27 ¹ Because I find that plaintiff failed to exhaust her administrative remedies, I do not
28 address defendants’ arguments on the merits.

1 more than 21 days following the service of a motion for summary judgment. The moving party
2 may, if necessary, file a reply within seven days after the opposition is filed, after which the
3 motion is ordinarily regarded as fully briefed. *Id.* Plaintiff contends that she was unable to fully
4 brief her response to defendants’ supplemental reply brief because her access to legal materials
5 was limited by a ten-day placement in administrative segregation and, for part of the month of
6 November, a Covid-related quarantine. ECF No. 71. Plaintiff has already had nearly six months
7 to respond to defendants’ motion for summary judgment, and during this time she has filed two
8 oppositions. She neither explains why these oppositions are insufficient nor provides any other
9 reason why she should be granted leave to file a sur-reply to defendants’ supplemental reply brief,
10 in contravention of Local Rule 230(l).² *See id.* She certainly has not made a showing of
11 extraordinary cause such as would merit an additional thirty-day extension.

12 Accordingly, it is hereby ORDERED that plaintiff’s motion for an extension of time, ECF
13 No. 71, is denied.

14 Further, it is hereby RECOMMENDED that:

- 15 1. Defendants’ motion for summary judgment, ECF No. 53, be granted.
- 16 2. Plaintiff’s claims against all defendants be dismissed without prejudice for failure to
17 exhaust administrative remedies.
- 18 3. The Clerk of Court be directed to close the case.

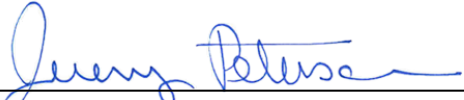
19 I submit these findings and recommendations to the U.S. District Judge presiding over the
20 case under 28 U.S.C. § 636(b)(1)(B) and Eastern District Local Rule 304. Within 14 days of the
21 service of the findings and recommendations, the parties may file written objections to the
22 findings and recommendations with the court and serve a copy on all parties. Their objections
23 must be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The
24 presiding district judge will then review the findings and recommendations under 28 U.S.C.
25 § 636(b)(1)(C).

26 ² On December 29, 2021, plaintiff filed her proposed sur-reply, ECF No. 72, pending
27 resolution of ECF No. 71. Out of an abundance of caution, I have reviewed this filing. It
28 contains no new information that would affect my findings and recommendations in the
resolution of defendants’ motion for summary judgment.

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IT IS SO ORDERED.

Dated: January 26, 2022



JEREMY D. PETERSON
UNITED STATES MAGISTRATE JUDGE