

1 In his objections, plaintiff clarifies he is pursuing a whistleblower complaint in Case No.
2 12019-1462, currently under investigation by the California Bureau of State Audits. Plaintiff
3 agrees that in this action, in which he challenges the conditions of his confinement under the
4 Eighth and Fourteenth Amendments, plaintiff relies on California Government Code § 8547,
5 California’s Whistleblower Statute, for his statement that he was not required to exhaust
6 administrative remedies. ECF No. 11 at 2. But plaintiff claims it was error for the magistrate
7 judge not to apply a federal Whistleblower Protection Act enacted by the U.S. Congress, which
8 plaintiff claims was the genesis of the California whistleblowing statute. Plaintiff does not
9 identify the federal act with a statutory citation. Plaintiff further argues he does not have to be an
10 employee to seek protection under either whistleblowing statute, but provides no specific case or
11 statute citation, other than the state statutory section 8547, to support his argument.¹

12 Notwithstanding his objections, plaintiff provides no persuasive or binding legal authority
13 for his view that he is exempt from the Prison Litigation Reform Act (“PLRA”) requirement that
14 he must first exhaust his administrative remedies prior to raising conditions of confinement
15 claims. 42 U.S.C. § 1997e(a). Congress’s mandate of exhaustion has been acknowledged and
16 enforced by the United States Supreme Court on multiple occasions. *Ross v. Blake*, 136 S. Ct.
17 1850 (2016) (holding inmate “must exhaust available remedies, but need not exhaust unavailable
18 ones”); *Albino v. Baca*, 747 F.3d 1162, 1171 (9th Cir. 2014) (“The PLRA mandates that inmates
19 exhaust all available administrative remedies before filing ‘any suit challenging prison
20 conditions,’ including, but not limited to, suits under § 1983,” quoting *Woodford v. Ngo*, 548 U.S.
21 81, 85 (2006)). Here, plaintiff did check a box in Section D.5 of his original complaint that said
22 there were no administrative remedies available at his institution. ECF No. 1 at 6. But in
23 explaining why he did not appeal, he states only in conclusory fashion that under California’s
24 whistleblower statute, a “plaintiff need not exhaust administrative remedies,” *id.*, without
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26 ¹ Plaintiff cites 42 U.S.C. § 1915(g) and *Andrews v. Cervantes*, 493 F.3d 1047, 1055 (9th Cir.
27 2007). However, these authorities do not apply in this context because plaintiff has not been
28 found to be three-strikes barred under § 1915(g) by filing three or more actions or appeals that
were dismissed on the grounds that they were frivolous, malicious, or failed to state a claim.

1 supporting authority. In his objections, petitioner does not argue further appeals were unavailable
2 to him. *See generally* ECF No. 11.

3 Petitioner also requests he be appointed counsel, as he says is his right under the
4 Whistleblower Act. ECF No. 11 at 1-2. But petitioner points to no authority supporting that
5 assertion, and the court is not aware of any either.

6 Accordingly, IT IS HEREBY ORDERED that:

- 7 1. The findings and recommendations filed April 8, 2020, ECF No. 8, are adopted in full;
8 and
9 2. This action is dismissed without prejudice.

10 DATED: November 30, 2020.

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13 CHIEF UNITED STATES DISTRICT JUDGE
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