

1 concludes the instant action must be dismissed.

2 As an initial matter, the Court finds the AC is subject to dismissal because plaintiff
3 has not provided therein sufficient information for his claim to go forward. Specifically,
4 plaintiff alleges that “around June 2007,” while plaintiff was being escorted either “to the
5 hospital or hole,” plaintiff was assaulted by two unknown officers. (AC at 3:10-21.)
6 Plaintiff states the information about the responsible guards might be documented in “files”
7 or plaintiff’s records, the latter of which the guards allegedly lost. (Id.) While the AC
8 provides new information with respect to the circumstances surrounding the alleged assault,
9 plaintiff cannot proceed thereon as plaintiff still has not identified by name the guards
10 allegedly responsible for assaulting him, nor has he provided sufficient information with
11 respect to the date on which such assault occurred. The Court cannot investigate plaintiff’s
12 claim or otherwise provide plaintiff with the information he needs to prosecute his claim.
13 Consequently, as it appears plaintiff currently is unable to provide information necessary for
14 the instant matter to proceed, the AC will be dismissed without prejudice to plaintiff’s filing
15 a new action should he be able to obtain the names of the guards who allegedly assaulted him
16 and the approximate date on which the incident occurred.

17 Additionally, the AC is subject to dismissal because plaintiff did not exhaust his
18 administrative remedies before filing suit. The Prison Litigation Reform Act of 1995, Pub.
19 L. No. 104-134, 110 Stat. 1321 (1996) (“PLRA”) provides: “No action shall be brought with
20 respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner
21 confined in any jail, prison, or other correctional facility until such administrative remedies
22 as are available are exhausted.” 42 U.S.C. § 1997e(a). Exhaustion under § 1997(e)(a) is
23 mandatory and not left to the discretion of the district court. Woodford v. Ngo, 548 U.S. 81,
24 84 (2006). Exhaustion is a prerequisite to all prisoner lawsuits concerning prison life,
25 whether such actions involve general conditions or particular episodes, whether they allege
26 excessive force or some other wrong, and even if they seek relief not available in grievance
27 proceedings, such as money damages. Porter v. Nussle, 534 U.S. 516, 524 (2002). An action
28 must be dismissed unless the prisoner exhausted his available administrative remedies before

1 he filed suit. McKinney v. Carey, 311 F.3d 1198, 1199 (9th Cir. 2002).

2 Because exhaustion under § 1997e(a) is an affirmative defense, a complaint may be
3 dismissed for failure to exhaust only if such failure is obvious from the face of the complaint
4 and/or any attached exhibits, see Wyatt v. Terhune, 315 F.3d 1108, 1119-20 (9th Cir. 2003),
5 or where the prisoner has “conceded nonexhaustion” and “no exception to exhaustion
6 applies,” id. at 1120.

7 Here, the Court finds it is obvious from the face of the AC that plaintiff did not
8 exhaust his administrative remedies prior to filing the instant action, and that no exception to
9 the exhaustion requirement applies to plaintiff’s claim. Specifically, in the form complaint
10 used by plaintiff to file the AC, there is a section requiring the party filing the action to
11 provide information with respect to the exhaustion of administrative remedies, and plaintiff,
12 in response to the question “Is there a grievance procedure available at the institution where
13 the events relating to your current complaint occurred?” checked “No.” (AC at 1:(I)(B).)
14 Contrary to plaintiff’s assertion, however, each prison in California provides its prisoners and
15 parolees the right to appeal administratively “any departmental decision, action, condition or
16 policy perceived by those individuals as adversely affecting their welfare.” Cal. Code Regs.
17 tit. 15 (“CCR”), § 3084.1(a).¹ Further, as noted, plaintiff’s allegations in the AC reflect his
18 lack of knowledge as to basic facts concerning his claim, in particular, the names of the
19 guards who are alleged to have assaulted him and the date on which the incident occurred;
20 such information is precisely the type of information that ordinarily would be discovered
21 during the administrative grievance process.

22 Section 42 U.S.C. § 1997e(a) requires a prisoner-plaintiff to present his claims to each
23 available level of administrative review before raising those claims in a § 1983 complaint in

24
25 ¹In order to exhaust available administrative remedies within this system, a prisoner
26 must proceed through several levels of appeal: (1) informal review, (2) first formal level
27 appeal on a CDC 602 inmate appeal form, (3) second formal level appeal to the institution
28 head or designee, and (4) third formal level appeal to the Director of the California
Department of Corrections and Rehabilitation. See CCR § 3084.5; Barry v. Ratelle, 985 F.
Supp. 1235, 1237 (S.D. Cal. 1997). A final decision from the Director’s level of review
satisfies the exhaustion requirement under § 1997e(a). Id. at 1237-38.


1 federal court. As it is clear from the complaint that plaintiff has not exhausted his
2 administrative remedies, and there is no applicable exception to the exhaustion requirement,
3 the complaint, for such additional reason, is subject to dismissal without prejudice.

4 Accordingly, the above-titled action is hereby DISMISSED, without prejudice to
5 plaintiff's refiling his claim in a new action after he has developed sufficient facts for his
6 claim to proceed, and after all available administrative remedies have been exhausted.

7 The Clerk shall close the file.

8 IT IS SO ORDERED.

9 DATED: June 15, 2010


MAXINE M. CHESNEY
United States District Judge

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