

1  
2  
3  
4  
5 UNITED STATES DISTRICT COURT  
6 NORTHERN DISTRICT OF CALIFORNIA  
7

8 TION ALONZO HILL, SR.,

No. C 09-5434 MHP (pr)

9 Plaintiff,

**ORDER DENYING MOTION TO  
DISMISS AND SETTING SCHEDULE**

10 v.

11 DEPUTY ARNOLD, etc.; et al.,

12 Defendants.  
13 \_\_\_\_\_/

14 **INTRODUCTION**

15 Tion Alonzo Hill, Sr., formerly an inmate at the San Francisco County Jail, filed this  
16 pro se civil rights action under 42 U.S.C. § 1983 alleging that excessive force was used on  
17 him at the jail. The matter is now before the court for consideration of defendants'  
18 unopposed motion to dismiss on the ground that Hill did not exhaust administrative remedies.  
19

20 **BACKGROUND**

21 In his complaint, Hill alleged that, on July 13, 2009, he was “attacked” by deputy  
22 Arnold and other deputies. He further alleged that he was handcuffed too tightly, was forced  
23 into every wall and dragged by his hands while cuffed. He alleged that he was at the time  
24 complying with orders and not resisting. He further alleged that he was taken to the lock-up  
25 part of the jail, where he was attacked by sergeant Sanchez and other deputies who  
26 “proceeded to kick on me and twist my ankle and [force] into the middle of my back.”  
27 Complaint, p. 3.

28 Hill filed an inmate grievance about the incident. See Cauteruccio Decl., Ex. A. In

1 his grievance, Hill stated that force was used on him by deputy Arnold and other deputies.  
2 The grievance did not mention sergeant Sanchez by name or title.

3 The issue presented by defendants' motion is whether the failure to name sergeant  
4 Sanchez as one of the wrongdoers means that the claim against sergeant Sanchez is  
5 unexhausted.

### 6 DISCUSSION

7 A prisoner's failure to exhaust administrative remedies is a matter in abatement.  
8 Defendants have the burden of raising and proving the absence of exhaustion, and may do so  
9 by way of an unenumerated Rule 12(b) motion. Wyatt v. Terhune, 315 F.3d 1108, 1119 (9th  
10 Cir. 2003). "In deciding a motion to dismiss for a failure to exhaust nonjudicial remedies, the  
11 court may look beyond the pleadings and decide disputed issues of fact." Id. at 1119-20,  
12 citing Ritza v. Int'l Longshoremen's & Warehousemen's Union, 837 F.2d 365, 368 (9th Cir.  
13 1988). The court can decide factual issues in a jurisdictional or related type of motion  
14 because there is no right to a jury trial as to that portion of the case, unlike the merits of the  
15 case (where there is a right to a jury trial). See id. Wyatt and Ritza allow this court to  
16 resolve factual disputes, but only with regard to the exhaustion issue.

17 "No action shall be brought with respect to prison conditions under [42 U.S.C. §  
18 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other  
19 correctional facility until such administrative remedies as are available are exhausted." 42  
20 U.S.C. § 1997e(a). Exhaustion in prisoner cases covered by § 1997e(a) is mandatory. Porter  
21 v. Nussle, 534 U.S. 516, 524 (2002). All available remedies must be exhausted; those  
22 remedies "need not meet federal standards, nor must they be 'plain, speedy, and effective.'"  
23 Id. (citation omitted). Even when the prisoner seeks relief not available in grievance  
24 proceedings, notably money damages, exhaustion is a prerequisite to suit. Id.; Booth v.  
25 Churner, 532 U.S. 731, 741 (2001). The statute requires "proper exhaustion" of available  
26 administrative remedies. See Woodford v. Ngo, 548 U.S. 81, 93 (2006).

27 The administrative grievance system available to inmates at the San Francisco County  
28 Jail at the relevant time is described in the San Francisco Sheriff's Department Policy And

1 Procedure No. F-06, which is described in the Keller Declaration but mistakenly not attached  
2 to it. Keller describes the administrative grievance system thusly: An inmate fills out an  
3 inmate grievance form and submits it to a member of the staff. The inmate and staff member  
4 attempt to resolve the grievance immediately. Regardless of whether it is resolved at that  
5 level, the grievance is given to the watch commander to log. If the grievance is not resolved  
6 at the initial level, the watch commander has five days to try to resolve it and return it to the  
7 inmate. If the inmate is dissatisfied, he may appeal to the facility commander of the jail, who  
8 has five days to try to resolve it and return it to the inmate. If the inmate is dissatisfied with  
9 that response, he may appeal to the custody division commander of the Sheriff's Department.  
10 A decision by the custody division commander is final and completes the grievance process.

11 "The level of detail necessary in a grievance to comply with the grievance procedures  
12 will vary from system to system and claim to claim, but it is the prison's requirements, and  
13 not the PLRA, that define the boundaries of proper exhaustion." Jones v. Bock, 549 U.S.  
14 199, 218 (2007). Because the written policy is not attached to the Keller declaration, it  
15 cannot be determined whether that written policy explains the level of detail that the inmate  
16 must include in his grievance. The grievance form itself directs the inmate: "Please be  
17 specific: time, date, etc.)" Cauterruccio Decl. Ex. A. The grievance form does not direct the  
18 inmate to identify by name all the alleged wrongdoers. In light of the absence of any  
19 mention on the form about the requisite level of factual specificity as to the wrongdoer's  
20 identity, it appears that the grievance suffices if it alerts the prison to the time and date of the  
21 wrong for which redress is sought. See Griffin v. Arpaio, 557 F.3d 1117, 1120 (9th Cir.  
22 2009) (quoting Strong v. David, 297 F.3d 646, 650 (7th Cir. 2002)); see, e.g., O'Guinn v.  
23 Lovelock Correctional Center, 502 F.3d 1056, 1062-63 (9th Cir. 2007) (grievance requesting  
24 a lower bunk due to poor balance resulting from a previous brain injury was not equivalent  
25 to, and therefore did not exhaust administrative remedies for, claims of denial of mental  
26 health treatment in violation of the ADA and Rehabilitation Act). The grievance need not  
27 include every fact necessary to prove each element of an eventual legal claim. Griffin, 557  
28 F.3d at 1120.

1 Having compared the § 1983 complaint with the inmate grievance, the court  
2 concludes that Hill did exhaust administrative remedies regarding the claims in his complaint  
3 against Sanchez as well as Arnold. Hill's inmate grievance focused on deputy Arnold, but  
4 also mentioned that other members of the correctional staff were present during the assault.  
5 The fact that Hill did not identify sergeant Sanchez by name is immaterial to the exhaustion  
6 question because Hill was not required by the form or policy to name each of the  
7 wrongdoers. See Jones, 549 U.S. at 219. The gist of Hill's inmate grievance was that he had  
8 been subjected to unnecessary force on July 13, 2009. Hill's grievance provided enough  
9 information about the incident that a reasonable investigation of it would have uncovered (if  
10 true) that sergeant Sanchez was a participant.

11 If an inmate genuinely wanted relief in the administrative grievance and appeal  
12 process, he would help his cause greatly by being very specific as to what happened, who  
13 caused his problem and what relief he wanted, but the failure to do so does not mean he has  
14 not exhausted administrative remedies. Proper exhaustion requires a minimum level of  
15 information rather than an optimal level of information. Hill provided the minimum level of  
16 information necessary to exhaust administrative remedies.

### 17 CONCLUSION

18 For the foregoing reasons, defendants' motion to dismiss is DENIED. (Docket # 10.)  
19 In light of the denial of the motion to dismiss, the court now sets the following schedule to  
20 move this case toward resolution:

21 1. No later than **February 18, 2011**, defendants must file and serve a  
22 motion for summary judgment or other dispositive motion. If defendants are of the opinion  
23 that this case cannot be resolved by summary judgment, they must so inform the court prior  
24 to the date the motion is due.

25 2. Plaintiff's opposition to the summary judgment or other dispositive  
26 motion must be filed with the court and served upon defendants no later than **March 18,**  
27 **2011**. Plaintiff is reminded to bear in mind the notice and warning regarding summary  
28 judgment in the order of service as he prepares his opposition to any summary judgment


1 motion.

2 3. If defendants wish to file a reply brief, they must file and serve the reply  
3 brief no later than **April 4, 2011**.

4 Plaintiff is reminded that he must send to defendants' counsel a copy of every  
5 document he files in this action.

6 IT IS SO ORDERED.

7 Dated: January 5, 2011

  
Marilyn Hall Patel  
United States District Judge

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28