

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RONNIE L. MOODY,	)	No. C 10-0821 JSW (PR)
	)	
Plaintiff,	)	<b>ORDER OF DISMISSAL</b>
	)	
v.	)	(Docket No. 2)
	)	
OFFICERS NACKORD, LAMBOY,	)	
CARRINGTON AND TERRI, SAN	)	
QUENTIN STATE PRISON,	)	
	)	
Defendant.	)	

---

Plaintiff, formerly a California prisoner, filed this pro se civil rights action under 42 U.S.C § 1983, complaining about the conditions of his confinement while incarcerated at San Quentin State Prison. In the complaint, Plaintiff states that he has not exhausted all of his administrative remedies to the highest level available, alleging that he completed the exhaustion process by filing a “government tort claims form.” (Complaint at 2.).

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. See *id.* at § 1915A(b)(1),(2). Pro se pleadings, however, must be liberally construed. See *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

1           The Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, 110 Stat. 1321  
2 (1996) (“PLRA”) provides: “No action shall be brought with respect to prison conditions  
3 under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail,  
4 prison, or other correctional facility until such administrative remedies as are available  
5 are exhausted.” 42 U.S.C. § 1997e(a). Exhaustion is mandatory and not left to the  
6 discretion of the district court. *Woodford v. Ngo*, 126 S. Ct. 2378, 2382 (2006).  
7 Exhaustion is a prerequisite to all prisoner lawsuits concerning prison life, whether such  
8 actions involve general conditions or particular episodes, whether they allege excessive  
9 force or some other wrong, and even if they seek relief not available in grievance  
10 proceedings, such as money damages. *Porter v. Nussle*, 534 U.S. 516, 524 (2002). The  
11 exhaustion requirement requires “proper exhaustion” of all available administrative  
12 remedies. *Woodford*, 126 S. Ct. at 2387.

13           Because exhaustion under § 1997e(a) is an affirmative defense, a complaint may  
14 be dismissed for failure to exhaust only if failure to exhaust is obvious from the face of  
15 the complaint and/or any attached exhibits. *See Wyatt v. Terhune*, 315 F.3d 1108,  
16 1119-20 (9th Cir. 2003). The court may dismiss a complaint for failure to exhaust where  
17 the prisoner “conce[des] to nonexhaustion” and “no exception to exhaustion applies.” *Id.*  
18 at 1120. Here, Plaintiff concedes in his complaint that he has not exhausted his  
19 administrative remedies within the prison administrative appeals process (Complaint at  
20 2), and no exception to exhaustion is alleged or apparent in the amended complaint.

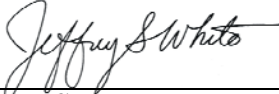
21           Section 1997e(a) requires that Plaintiff exhaust his claim before raising the claim  
22 in a § 1983 complaint in federal court. An action must be dismissed unless the prisoner  
23 exhausted his available administrative remedies *before* he or she filed suit, even if the  
24 prisoner fully exhausts while the suit is pending. *McKinney v. Carey*, 311 F.3d 1198,  
25 1199 (9th Cir. 2002). As it is clear from the complaint that Plaintiff has not pursued all  
26 levels of administrative review available to him in exhausting his complaint and there is  
27  
28

1 no applicable exception to the exhaustion requirement, dismissal without prejudice is  
2 appropriate.

3 Accordingly, the above-titled action is hereby DISMISSED, without prejudice to  
4 Plaintiff's refiling his claim after all available administrative remedies have been  
5 exhausted. The Clerk shall terminate Plaintiff's pending motion (docket no. 2), close the  
6 file and enter judgment in this matter.

7 IT IS SO ORDERED.

8 DATED: October 12, 2010

9   
10 

---

JEFFREY S. WHITE  
11 United States District Judge  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA  
4

5 RONNIE LEE MOODY,  
6 Plaintiff,  
7

Case Number: CV10-00821 JSW

**CERTIFICATE OF SERVICE**

8 v.

9 OFFICER T. NACKORD et al,  
10 Defendant.  
\_\_\_\_\_ /

11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
12 Court, Northern District of California.

13 That on October 12, 2010, I SERVED a true and correct copy(ies) of the attached, by placing  
14 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by  
15 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office  
16 delivery receptacle located in the Clerk's office.

17 Ronnie Lee Moody T54036  
18 C/O Modesto Parole Unit 2  
19 1001 Needham Street  
20 Modesto, CA 95354

21 Dated: October 12, 2010



22 Richard W. Wieking, Clerk  
23 By: Jennifer Ottolini, Deputy Clerk  
24  
25  
26  
27  
28