

1 DISMISSED without prejudice due to plaintiff's failure to exhaust
2 administrative remedies.

3 I.

4 The Prison Litigation Reform Act of 1995 ("PLRA") amended
5 42 U.S.C. § 1997e to provide that "[n]o action shall be brought with
6 respect to prison conditions under [42 U.S.C. § 1983], or any other
7 Federal law, by a prisoner confined in any jail, prison, or other
8 correctional facility until such administrative remedies as are
9 available are exhausted." 42 U.S.C. § 1997e(a). Exhaustion is
10 mandatory and no longer left to the discretion of the district
11 court. Woodford v. Ngo, 548 U.S. 81, 84 (2006) (citing Booth v.
12 Churner, 532 U.S. 731, 739 (2001)). Under the PLRA, all available
13 administrative remedies must be exhausted and such remedies "need
14 not meet federal standards, nor must they be 'plain, speedy[] and
15 effective.'" Porter v. Nussle, 534 U.S. 516, 524 (2002) (citing
16 Booth, 532 U.S. at 739). The PLRA's exhaustion requirement requires
17 "proper exhaustion" of available administrative remedies, "which
18 means using all steps that the agency holds out, and doing so
19 properly (so that the agency addresses the issues on the merits)."
20 Woodford, 548 U.S. at 90 (emphasis in original and internal
21 quotations and citations omitted). in original and internal
22 quotations and citations omitted). The exhaustion requirement must
23 be satisfied prior to the commencement of the action; exhaustion
24 subsequent to the filing of suit will not suffice McKinney v.
25 Carey, 311 F.3d 1198, 1199-1201 (9th Cir. 2002) (action must be
26 dismissed without prejudice unless prisoner exhausted available
27 administrative remedies before he filed suit, even if prisoner fully
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1 exhausts while the suit is pending). Broadly stated, the purpose of
2 the PLRA exhaustion requirement is to "afford[] corrections
3 officials time and opportunity to address complaints internally
4 before allowing the initiation of a federal case." Porter, 534 U.S.
5 at 525.

6 Failure to exhaust under § 1997e(a) is an affirmative
7 defense. Wyatt v. Terhune, 315 F.3d 1108, 1119 (9th Cir. 2003). A
8 defendant has the burden of raising and proving the absence of
9 exhaustion in an unenumerated 12(b) motion. Id. at 1119-20. In
10 deciding a motion to dismiss for failure to exhaust administrative
11 remedies under § 1997e(a), the court may look beyond the pleadings
12 and decide disputed issues of fact. Id. If the court concludes a
13 prisoner has not exhausted administrative remedies, the proper
14 remedy is dismissal of the claim without prejudice. Id. at 1120.

15 II.

16 15 Cal. Code Regs. § 1073 provides county jail inmates
17 with a right to "appeal and have resolved grievances" relating to
18 their confinement. 15 Cal. Code Regs. § 1073(a). Pursuant to
19 Section 1073, the San Mateo County Maguire Correctional Facility
20 ("MCF") has established a Prisoner Grievance System. It is
21 undisputed that the administrative remedies available to plaintiff
22 and at issue here are those of the San Mateo County MCF. At the
23 time of the incident, prisoner grievances were handled according to
24 Section 06.08 of the San Mateo County MCF's Policy and Procedures
25 Manual. Doc. #10, Reid Decl. at ¶ 8 and Exh. 5.

26 Section 06.08 requires an inmate to first attempt to
27 resolve the grievance informally with a line staff member. If the
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1 problem cannot be resolved on the staff level, the inmate must
2 complete an Inmate Grievance Form and, where the grievance claims
3 inappropriate staff behavior, submit the grievance to the Housing
4 Sergeant. The Housing Sergeant will review, reply to, or forward
5 the grievance to the Watch Commander. The Watch Commander shall
6 provide the inmate with a written response. The inmate may appeal
7 the Watch Commander's decision to the Detention Division Captain
8 (Facility Commander), who will issue a final decision. Id.

9 III.

10 Here, plaintiff admits that he failed to exhaust all his
11 administrative remedies, Doc. #1 at 2, and the record reflects that
12 plaintiff has not filed any grievances at San Mateo County MCF, Doc.
13 #10, Reid Decl. at ¶ 9. Plaintiff states that his transfer to San
14 Quentin State Prison rendered him unable to exhaust all his
15 administrative remedies. Defendant's alleged indifference to
16 plaintiff's safety took place on November 10, 2009. Id. at 3. The
17 record indicates that plaintiff remained at San Mateo County MCF for
18 another five months, and was not transferred to San Quentin State
19 Prison until March 12, 2010. Doc. #10, Reid Decl. at ¶ 5 and Exh.
20 2. Plaintiff had at least five months at San Mateo County MCF to
21 file a grievance. By failing to raise his grievance at San Mateo
22 County MCF and waiting until he was transferred to another prison to
23 file his suit, plaintiff deprived San Mateo County MCF correctional
24 officials the "time and opportunity to address complaints internally
25 before allowing the initiation of a federal case", which is the
26 purpose of the PLRA exhaustion requirement. Porter, 534 U.S. at
27 525. Plaintiff's action must be dismissed without prejudice. See

1 Wyatt, 315 F.3d at 1120.

2 IV.

3 After defendants filed their summary judgment motion on
4 June 20, 2011, the court granted plaintiff two generous extensions
5 of time to file his opposition to December 7, 2011, and was advised
6 that no further extensions of time would be granted. On December
7 12, 2011, plaintiff nevertheless sought an indefinite extension of
8 time to conduct additional discovery. Plaintiff stated that he was
9 waiting on declarations which he had requested from third parties in
10 March 2011, and that he planned to request defendant's work records.
11 Plaintiff's request for more time is denied as not warranted. He
12 has had ample time to conduct discovery and the information sought
13 would not preclude summary judgment. Cf. Margolis v. Ryan, 140 F.3d
14 850, 853 (9th Cir. 1998) (party seeking continuance to oppose
15 summary judgment under Rule 56(f) must make clear what information
16 is sought and how it would preclude summary judgment).

17 V.

18 For the reasons set forth below, this action is DISMISSED
19 without prejudice. The Clerk shall terminate all pending motions as
20 moot and close the file.

21 IT IS SO ORDERED.

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23 DATED 03/27/2012



THELTON E. HENDERSON
United States District Judge

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