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

PATRICK BRADFORD,

No. C-12-0897 TEH (PR)

Plaintiff,

ORDER OF DISMISSAL

v.

Defendants.

Plaintiff, a state prisoner, has filed this pro se civil rights action pursuant to 42 U.S.C. § 1983 alleging that the prison officials at San Quentin State Prison in San Quentin, California and at Correctional Training Facility-Soledad in Soledad, California, have refused to treat his chronic lower back pain. Doc. #1. For the reasons set forth below, this action is DISMISSED without prejudice.

I.

The Prison Litigation Reform Act of 1995 ("PLRA") amended 42 U.S.C. § 1997e to provide that "[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any other

1 Federal law, by a prisoner confined in any jail, prison, or other
2 correctional facility until such administrative remedies as are
3 available are exhausted." 42 U.S.C. § 1997e(a). Exhaustion is
4 mandatory and no longer left to the discretion of the district
5 court. Woodford v. Ngo, 548 U.S. 81, 84 (2006) (citing Booth v.
6 Churner, 532 U.S. 731, 739 (2001)). Under the PLRA, all available
7 administrative remedies must be exhausted and such remedies "need
8 not meet federal standards, nor must they be 'plain, speedy[] and
9 effective.'" Porter v. Nussle, 534 U.S. 516, 524 (2002) (citing
10 Booth, 532 U.S. at 739). The PLRA's exhaustion requirement requires
11 "proper exhaustion" of available administrative remedies, "which
12 means using all steps that the agency holds out, and doing so
13 properly (so that the agency addresses the issues on the merits)."
14 Woodford, 548 U.S. at 90 (emphasis in original and internal
15 quotations and citations omitted). The exhaustion requirement must
16 be satisfied prior to the commencement of the action; exhaustion
17 subsequent to the filing of suit will not suffice McKinney v.
18 Carey, 311 F.3d 1198, 1199-1201 (9th Cir. 2002) (action must be
19 dismissed without prejudice unless prisoner exhausted available
20 administrative remedies before he filed suit, even if prisoner fully
21 exhausts while the suit is pending). Broadly stated, the purpose of
22 the PLRA exhaustion requirement is to "afford[] corrections
23 officials time and opportunity to address complaints internally
24 before allowing the initiation of a federal case." Porter, 534 U.S.
25 at 525. If the court concludes a prisoner has not exhausted
26 administrative remedies, the proper remedy is dismissal of the claim
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1 without prejudice. Wyatt v. Terhune, 315 F.3d 1108, 1120 (9th Cir.
2 2003).

3 Here, plaintiff has filed a motion an extension of time to
4 file his in forma pauperis application and his complaint so that he
5 may exhaust his administrative remedies. Doc. #4 at 1-2. Plaintiff
6 states that he sent his third level appeal to Sacramento for a
7 Director Level Response on March 8, 2012, and has not yet received a
8 response. Id. Based on plaintiff's assertions, the Court finds
9 that plaintiff has failed to exhaust his administrative remedies
10 with regard to his claim that prison officials have refused to treat
11 his chronic lower back pain.

12 Plaintiff's complaint accordingly is DISMISSED without
13 prejudice to refiling after exhausting available administrative
14 remedies. See White v. McGinnis, 131 F.3d 593, 595 (6th Cir. 1997)
15 (court may dismiss sua sponte for failure to exhaust administrative
16 remedies). The Clerk shall terminate all pending motions as moot
17 and close the file.

18 IT IS SO ORDERED.

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20 DATED 03/26/2012



THELTON E. HENDERSON
United States District Judge

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