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

LUTHER JONES, JR.,

No. C-12-1109 TEH (PR)

Plaintiff,

ORDER OF DISMISSAL

v.

CALIFORNIA MEDICAL FACILITY CUSTODY STAFF, et al.,

Defendants.

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Plaintiff, a state prisoner, has filed this <u>pro se</u> civil rights action pursuant to 42 U.S.C. § 1983 alleging that his transfer from California Medical Facility ("CMF") to California State Prison - Solano ("CSP Solano") was an "adverse transfer," motivated by bias (Doc. #4 at 6), that has resulted in inadequate medical care, inadequate dental care and the loss of his property. He brings this action against CMF third floor custody staff, CMF Receiving and Release staff, and CSP-Solano medical staff. <u>Id.</u> at 4. For the reasons set forth below, this action is DISMISSED without prejudice.

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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 Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). Exhaustion is mandatory and no longer left to the discretion of the district court. Woodford v. Ngo, 548 U.S. 81, 84 (2006) (citing Booth v. Churner, 532 U.S. 731, 739 (2001)). Under the PLRA, all available administrative remedies must be exhausted and such remedies "need not meet federal standards, nor must they be 'plain, speedy[] and effective.'" Porter v. Nussle, 534 U.S. 516, 524 (2002) (citing Booth, 532 U.S. at 739). The PLRA's exhaustion requirement requires "proper exhaustion" of available administrative remedies, "which means using all steps that the agency holds out, and doing so properly (so that the agency addresses the issues on the merits)." Woodford, 548 U.S. at 90 (emphasis in original and internal quotations and citations omitted). The exhaustion requirement must be satisfied prior to the commencement of the action; exhaustion subsequent to the filing of suit will not suffice McKinney v. Carey, 311 F.3d 1198, 1199-1201 (9th Cir. 2002) (action must be dismissed without prejudice unless prisoner exhausted available administrative remedies before he filed suit, even if prisoner fully exhausts while the suit is pending). Broadly stated, the purpose of the PLRA exhaustion requirement is to "afford[] corrections

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officials time and opportunity to address complaints internally before allowing the initiation of a federal case." Porter, 534 U.S. 3 4 administrative remedies, the proper remedy is dismissal of the claim 5 without prejudice. Wyatt v. Terhune, 315 F.3d 1108, 1120 (9th Cir. 6 2003).

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22 DATED 04/03/2012

and close the file.

regard to his claims.

remedies.

THELTON E. HENDERSON

If the court concludes a prisoner has not exhausted

Here, plaintiff has informed the court that he has not

Plaintiff's complaint accordingly is DISMISSED without

See White v. McGinnis, 131 F.3d 593, 595 (6th Cir. 1997)

exhausted all his administrative remedies (Doc. #4 at 1), and

attached documentation indicating that he filed administrative

grievances in February and March 2012 (id. at 19-22). Based on

plaintiff has failed to exhaust his administrative remedies with

prejudice to refiling after exhausting available administrative

(court may dismiss sua sponte for failure to exhaust administrative

remedies). The Clerk shall terminate all pending motions as moot

plaintiff's assertions and the record, the Court finds that

United States District Judge

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IT IS SO ORDERED.

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