

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 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


1 officials time and opportunity to address complaints internally
2 before allowing the initiation of a federal case." Porter, 534 U.S.
3 at 525. If the court concludes a prisoner has not exhausted
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).

7 Here, plaintiff has informed the court that he has not
8 exhausted all his administrative remedies (Doc. #4 at 1), and
9 attached documentation indicating that he filed administrative
10 grievances in February and March 2012 (id. at 19-22). Based on
11 plaintiff's assertions and the record, the Court finds that
12 plaintiff has failed to exhaust his administrative remedies with
13 regard to his claims.

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

20 IT IS SO ORDERED.

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22 DATED 04/03/2012



THELTON E. HENDERSON
United States District Judge

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