

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

DANNY C. EASTER, AK-1133, )  
Plaintiff(s), ) No. C 13-1581 CRB (PR)  
vs. ) ORDER OF DISMISSAL  
NURSE PRUITT, et al., )  
Defendant(s). )

---

Plaintiff, a State of California prisoner incarcerated at the Correctional Training Facility in Soledad, has filed a pro se complaint for damages under 42 U.S.C. § 1983 claiming “inexcusable and lengthy delay” in receiving medical care. Docket #1 at 3. Plaintiff has not exhausted California’s prison administrative process, however.

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). Although once within the discretion of the district court, exhaustion in prisoner cases covered by § 1997e(a) is now mandatory. Porter v. Nussle, 534 U.S. 516, 524 (2002). All available remedies must now be exhausted; those remedies “need not meet federal standards, nor must they be ‘plain, speedy, and effective.’” Id. (citation omitted). Even when the prisoner seeks relief not available in grievance

1 proceedings, notably money damages, exhaustion is a prerequisite to suit. Id.;  
2 Booth v. Churner, 532 U.S. 731, 741 (2001). Similarly, exhaustion is a  
3 prerequisite to all prisoner suits about prison life, whether they involve general  
4 circumstances or particular episodes, and whether they allege excessive force or  
5 some other wrong. Porter, 534 U.S. at 532. PLRA's exhaustion requirement  
6 requires "proper exhaustion" of available administrative remedies. Woodford v.  
7 Ngo, 548 U.S. 81, 93 (2006).

8 The California Department of Corrections and Rehabilitation (CDCR)  
9 provides its inmates and parolees the right to appeal administratively "any  
10 departmental decision, action, condition, or policy which they can demonstrate as  
11 having an adverse effect upon their welfare." Cal. Code Regs. tit. 15,  
12 § 3084.1(a). It also provides its inmates the right to file administrative appeals  
13 alleging misconduct by correctional officers. See id. § 3084.1(e). In order to  
14 exhaust available administrative remedies within this system, a prisoner must  
15 submit his complaint on CDCR Form 602 and proceed through several levels of  
16 appeal: (1) informal level grievance filed directly with any correctional staff  
17 member, (2) first formal level appeal filed with one of the institution's appeal  
18 coordinators, (3) second formal level appeal filed with the institution head or  
19 designee, and (4) third formal level appeal filed with the CDCR director or  
20 designee. Id. § 3084.5; Brodheim v. Cry, 584 F.3d 1262, 1264-65 (9th Cir.  
21 2009). This satisfies the administrative remedies exhaustion requirement under  
22 § 1997e(a). Barry v. Ratelle, 985 F. Supp. 1235, 1237-38 (S.D. Cal. 1997).

23 Nonexhaustion under § 1997e(a) is an affirmative defense which should  
24 be brought by defendant(s) in an unenumerated motion to dismiss under Federal  
25 Rule of Civil Procedure 12 (b). Wyatt v. Terhune, 315 F.3d 1108, 1119 (9th Cir.  
26 2003). But a complaint may be dismissed by the court for failure to exhaust if a  
27

1 prisoner “conce[des] to nonexhaustion” and “no exception to exhaustion applies.”  
2 Id. at 1120. Here, plaintiff concedes he did not exhaust available administrative  
3 remedies through the Director’s level of review before filing suit, but claims that  
4 he need not do so because the damages he seeks are not “attainable” thru  
5 CDCR’s administrative appeal process. Not so. The Supreme Court has made  
6 clear that exhaustion is a prerequisite to suit even when the prisoner seeks relief  
7 not available in grievance proceedings. See Booth, 532 U.S. at 741. Plaintiff did  
8 not exhaust available administrative remedies before filing suit or present any  
9 extraordinary circumstances which might compel that he be excused from doing  
10 so. Cf. Booth, 532 U.S. at 741 n.6 (courts should not read “futility or other  
11 exceptions” into § 1997e(a)).

12 Accordingly, the complaint is DISMISSED without prejudice to refiling  
13 after exhausting CDCR’s administrative process. See McKinney v. Carey, 311  
14 F.3d 1198, 1199-1201 (9th Cir. 2002) (action must be dismissed without  
15 prejudice unless prisoner exhausted available administrative remedies before he  
16 filed suit, even if prisoner fully exhausts while the suit is pending).

17 The clerk shall enter judgment in accordance with this order and close the  
18 file.

19 SO ORDERED.

20 DATED: Aug. 8, 2013



---

CHARLES R. BREYER  
United States District Judge