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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DONALD BROWN,
Plaintiff,
v.
CONCORD POLICE DEPARTMENT, et
al.,
Defendants.

Case No. 13-cv-02111-JST (PR)

ORDER OF DISMISSAL

United States District Court
Northern District of California

Plaintiff, a state prisoner, has filed a pro se complaint under 42 U.S.C. § 1983, alleging constitutional violations that occurred while he was housed at the Martinez Detention Facility. He has been granted leave to proceed in forma pauperis. 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). Under this section, an action must be dismissed unless the prisoner exhausted his available administrative remedies before he filed suit. See McKinney v. Carey, 311 F.3d 1198, 1199 (9th Cir. 2002). "[T]he PLRA's exhaustion requirement applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong." Porter v. Nussle, 534 U.S. 516, 532 (2002). Exhaustion of all "available" remedies is mandatory; those remedies need not meet federal standards, nor must they be "plain, speedy and effective." Id. at 524; Booth v. Churner, 532 U.S. 731, 739-40 & n.5 (2001). Even when the prisoner seeks relief not available in grievance proceedings, notably

1 money damages, exhaustion is a prerequisite to suit. Id. at 741. PLRA's exhaustion requirement
2 requires "proper exhaustion" of available administrative remedies. Woodford v. Ngo, 548 U.S.
3 81, 94 (2006). The purposes of the exhaustion requirement include allowing the prison or jail to
4 take responsive action, filtering out frivolous cases and creating an administrative record. See
5 Porter, 534 U.S. at 525.

6 Section 1073 of Title 15 of the California Code of Regulations provides county jail
7 inmates with a right to "appeal and have resolved grievances" relating to their confinement. Cal.
8 Code Regs. tit. 15, § 1073.

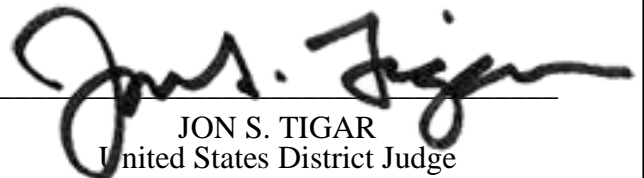
9 Non-exhaustion under § 1997e(a) is an affirmative defense which should be brought by
10 defendants in an unenumerated motion to dismiss under Federal Rule of Civil Procedure 12(b).
11 Wyatt v. Terhune, 315 F.3d 1108, 1119 (9th Cir. 2003). However, a complaint may be dismissed
12 by the court for failure to exhaust if a prisoner "conce[des] to nonexhaustion" and "no exception to
13 exhaustion applies." Id. at 1120. Here, plaintiff concedes he has not exhausted his administrative
14 remedies. (Compl. at 1.) Further, plaintiff has not presented any extraordinary circumstances
15 which might permit him to be excused from complying with PLRA's exhaustion requirement. Cf.
16 Booth, 532 U.S. at 741 n.6 (courts should not read "futility or other exceptions" into § 1997e(a)).

17 Accordingly, the complaint is DISMISSED without prejudice to refile after exhausting
18 California's prison administrative process. See McKinney, 311 F.3d at 1199-1201.

19 The Clerk shall enter judgment and close the file.

20 **IT IS SO ORDERED.**

21 Dated: June 6, 2013

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23 
24 JON S. TIGAR
United States District Judge