IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

JEFFREY T. BURTS,

Plaintiff,

v.

TILTON, et al.,

Defendants.

Case No. C 07-5131 CW (PR)

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS UNDER FEDERAL RULE OF CIVIL PROCEDURE 12(b)

This case involves Plaintiff Jeffrey Burts' claim that Defendants Benedetti and Cohen (Defendants) retaliated against him in violation of his rights under the First Amendment to the United States Constitution. Specifically, Plaintiff alleges that Defendants transferred him to administrative segregation in retaliation for his complaint that a staff member, E. Abanico, had searched him in a sexually explicit manner in violation of his rights.

Defendants moved this Court to dismiss the retaliation claim against Defendants Benedetti and Cohen under the nonenumerated portion of Rule 12(b) on the grounds that Plaintiff did not properly exhaust administrative remedies as to the claims against them as required by the Prison Litigation Reform Act. Defendants argue that Plaintiff filed an inmate appeal, but did not present the appeal to the second level of review, and did not obtain a decision from the Director's level of review, thereby failing to properly utilize the administrative procedures at the Correctional

Training Facility, or to properly exhaust administrative remedies concerning his retaliation claim as required by the Prison Litigation Reform Act. Plaintiff did not file an opposition to the motion to dismiss.

The Court reviewed Defendants' motion to dismiss, and good cause appearing for failure to exhaust and failure to prosecute, IT IS ORDERED that Defendants' motion to dismiss is GRANTED. Plaintiff's complaint is dismissed without prejudice.

Dated: DEC 06 2010

CLAUDIA WILKEN
United States District Judge