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28IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RONALD KNUTSON, No. C 09-05534 CW (PR)  
Plaintiff, ORDER OF DISMISSAL  
v.  
FRANCISCO JACQUEZ, et al.,  
Defendants.

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Plaintiff, a state prisoner, has filed a pro se complaint under 42 U.S.C. § 1983. Thereafter, he filed an amended complaint. He has also been granted leave to proceed in forma pauperis.

On February 25, 2010, Plaintiff filed a letter entitled, "Re: Notice of Withdraw," in which he makes a reference to the present case by stating: "On November 22, 2009, a new filing was submitted [in] . . . Case No. C 09-5534."<sup>1</sup> (Pl.'s Feb. 25, 2010 Letter at 1.) He then stated that he "will voluntarily withdraw from all matters . . . ." (Id. at 2.) Pursuant to the notice of voluntary dismissal of this action filed by Plaintiff on February 25, 2010, this action is terminated. See Fed. R. Civ. P. 41(a)(1)(A)(i) ("[A]n action may be dismissed by the plaintiff without order of the court . . . by filing a notice of dismissal."); Hamilton v. Shearson-Lehman Am. Exp. Inc., 813 F.2d 1532, 1534-1536 (9th Cir. 1987) (Rule 41(a)(1)(A)(i) does not require leave of court to dismiss the action). The dismissal is without prejudice. See Fed. R. Civ. P. 41(a)(1)(B) (unless plaintiff's notice of dismissal states otherwise, it is deemed to be "without prejudice"); Humphreys v. United States, 272 F.2d 411, 412 (9th Cir. 1959).

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<sup>1</sup> Plaintiff's original complaint was filed on November 20, 2009, and not on November 22, 2009.

1           However, the Court notes that Plaintiff's handwriting is  
2 difficult to decipher, and he does not clearly indicate that his  
3 February 25, 2010 letter was intended to be filed in this action.  
4 The Clerk filed Plaintiff's February 25, 2010 letter in the present  
5 case because he included the case number of this action in the body  
6 of his letter. In the event that it was not Plaintiff's intention  
7 to dismiss the present case voluntarily, the Court finds that  
8 dismissal is still appropriate because Plaintiff did not exhaust  
9 his administrative remedies prior to filing this action.

10           The Prison Litigation Reform Act of 1995 (PLRA) amended 42  
11 U.S.C. § 1997e to provide that "[n]o action shall be brought with  
12 respect to prison conditions under [42 U.S.C. § 1983], or any other  
13 Federal law, by a prisoner confined in any jail, prison, or other  
14 correctional facility until such administrative remedies as are  
15 available are exhausted." 42 U.S.C. § 1997e(a). Although once  
16 within the discretion of the district court, exhaustion in prisoner  
17 cases covered by § 1997e(a) is now mandatory. Porter v. Nussle,  
18 534 U.S. 516, 524 (2002). All available remedies must now be  
19 exhausted; those remedies "need not meet federal standards, nor  
20 must they be 'plain, speedy, and effective.'" Id. (citation  
21 omitted). Even when the prisoner seeks relief not available in  
22 grievance proceedings, notably money damages, exhaustion is a  
23 prerequisite to suit. Id.; Booth v. Churner, 532 U.S. 731, 741  
24 (2001). Similarly, exhaustion is a prerequisite to all prisoner  
25 suits about prison life, whether they involve general circumstances  
26 or particular episodes, and whether they allege excessive force or  
27 some other wrong. Porter, 534 U.S. at 532. PLRA's exhaustion  
28

1 requirement requires "proper exhaustion" of available  
2 administrative remedies. Woodford v. Ngo, 548 U.S. 81, 94 (2006).

3       The State of California provides its prisoners the right to  
4 appeal administratively "any departmental decision, action,  
5 condition or policy perceived by those individuals as adversely  
6 affecting their welfare." Cal. Code Regs. tit. 15, § 3084.1(a).  
7 It also provides them the right to file appeals alleging misconduct  
8 by correctional officers and officials. Id. § 3084.1(e). In order  
9 to exhaust available administrative remedies within this system, a  
10 prisoner must proceed through several levels of appeal:

11 (1) informal resolution; (2) formal written appeal on a CDC 602  
12 inmate appeal form; (3) second level appeal to the institution head  
13 or designee; and (4) third level appeal to the Director of the  
14 California Department of Corrections and Rehabilitation. Barry v.  
15 Ratelle, 985 F. Supp. 1235, 1237 (S.D. Cal. 1997) (citing Cal. Code  
16 Regs. tit. 15, § 3084.5). A final decision from the Director's  
17 level of review satisfies the exhaustion requirement under  
18 § 1997e(a). Id. at 1237-38.

19       Non-exhaustion under § 1997e(a) is an affirmative defense  
20 which should be brought by defendants in an unenumerated motion to  
21 dismiss under Federal Rule of Civil Procedure 12(b). Wyatt v.  
22 Terhune, 315 F.3d 1108, 1119 (9th Cir. 2003). However, a complaint  
23 may be dismissed by the court for failure to exhaust if a prisoner  
24 "conce[des] to nonexhaustion" and "no exception to exhaustion  
25 applies." Id. at 1120. Here, Plaintiff conceded that he had not  
26 exhausted his administrative remedies at the time he filed his  
27 original complaint on November 20, 2009, stating "Exhaustion of  
28 remedies pending. Seeking file date. Will amend when exhaustion

1 is completed." (Compl. at 2.) Plaintiff has since filed an  
2 amended complaint, in which he states that "an inmate appeal was  
3 typed and submitted to the administration at Pelican Bay State  
4 Prison seeking to establish a record for review as these conditions  
5 relate to exhaustion of administrative remedies." (Am. Compl. at  
6 2a.) An action must be dismissed unless the prisoner exhausted his  
7 available administrative remedies before he filed suit, even if the  
8 prisoner fully exhausts while the suit is pending. McKinney v.  
9 Carey, 311 F.3d 1198, 1199 (9th Cir. 2002); see Vaden v.  
10 Summerhill, 449 F.3d 1047, 1051 (9th Cir. 2006) (where  
11 administrative remedies are not exhausted before the prisoner sends  
12 his complaint to the court it will be dismissed even if exhaustion  
13 is completed by the time the complaint is actually filed).  
14 Plaintiff has not presented any extraordinary circumstances which  
15 might permit him to be excused from complying with PLRA's  
16 exhaustion requirement. Cf. Booth, 532 U.S. at 741 n.6 (courts  
17 should not read "futility or other exceptions" into § 1997e(a)).

18 Accordingly, the complaint is DISMISSED without prejudice to  
19 refiling his exhausted claims in a new action. See McKinney, 311  
20 F.3d at 1199-1201.

21 The Clerk of the Court shall enter judgment in accordance with  
22 this Order, terminate all pending motions, and close the file.

23 IT IS SO ORDERED.

24 Dated: 4/20/2010

  
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CLAUDIA WILKEN  
UNITED STATES DISTRICT JUDGE

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1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4 RONALD KNUTSON,  
5 Plaintiff,

Case Number: CV09-05534 CW

**CERTIFICATE OF SERVICE**

6 v.

7 FRANCISCO JACQUEZ et al,  
8 Defendant.

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
10 Court, Northern District of California.

11 That on April 20, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said  
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing  
13 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery  
14 receptacle located in the Clerk's office.

15 Ronald Knutson C-04763  
16 Pelican Bay State Prison  
17 P.O. Box 7500  
18 Crescent City, CA 95531

19 Dated: April 20, 2010

20 Richard W. Wieking, Clerk  
21 By: Nikki Riley, Deputy Clerk