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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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11 CHUCK LEE FULTON,

No. C 10-00194 SBA (PR)

12 Plaintiff,

**ORDER OF DISMISSAL;**  
**INSTRUCTIONS TO CLERK**

13 v.

14 RENEE KANAN, et al.,

15 Defendants.  
16 \_\_\_\_\_/

17 Plaintiff, a state prisoner, has filed a pro se complaint under 42 U.S.C. § 1983. He has been  
18 granted leave to proceed in forma pauperis. Plaintiff has not exhausted California's prison  
19 administrative process, however.

20 The Prison Litigation Reform Act of 1995 (PLRA) amended 42 U.S.C. § 1997e to provide  
21 that "[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any  
22 other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such  
23 administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). Although once  
24 within the discretion of the district court, exhaustion in prisoner cases covered by § 1997e(a) is now  
25 mandatory. Porter v. Nussle, 534 U.S. 516, 524 (2002). All available remedies must now be  
26 exhausted; those remedies "need not meet federal standards, nor must they be 'plain, speedy, and  
27 effective.'" Id. (citation omitted). Even when the prisoner seeks relief not available in grievance  
28 proceedings, notably money damages, exhaustion is a prerequisite to suit. Id.; Booth v. Churner,

1 532 U.S. 731, 741 (2001). Similarly, exhaustion is a prerequisite to all prisoner suits about prison  
2 life, whether they involve general circumstances or particular episodes, and whether they allege  
3 excessive force or some other wrong. Porter, 534 U.S. at 532. PLRA's exhaustion requirement  
4 requires "proper exhaustion" of available administrative remedies. Woodford v. Ngo, 548 U.S. 81,  
5 94 (2006).

6 The State of California provides its prisoners the right to appeal administratively "any  
7 departmental decision, action, condition or policy perceived by those individuals as adversely  
8 affecting their welfare." Cal. Code Regs. tit. 15, § 3084.1(a). It also provides them the right to file  
9 appeals alleging misconduct by correctional officers/officials. Id. § 3084.1(e). In order to exhaust  
10 available administrative remedies within this system, a prisoner must proceed through several levels  
11 of appeal: (1) informal resolution; (2) formal written appeal on a CDC 602 inmate appeal form;  
12 (3) second level appeal to the institution head or designee; and (4) third level appeal to the Director  
13 of the California Department of Corrections and Rehabilitation. Barry v. Ratelle, 985 F. Supp. 1235,  
14 1237 (S.D. Cal. 1997) (citing Cal. Code Regs. tit. 15, § 3084.5). A final decision from the Director's  
15 level of review satisfies the exhaustion requirement under § 1997e(a). Id. at 1237-38.

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

24 Accordingly, the complaint is DISMISSED without prejudice to refile after exhausting  
25 California's prison administrative process. See McKinney v. Carey, 311 F.3d 1198, 1199-1201 (9th  
26 Cir. 2002) (action must be dismissed without prejudice unless prisoner exhausted available  
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1 administrative remedies before he filed suit, even if prisoner fully exhausts while the suit is  
2 pending).

3 The Court has rendered its final decision on this matter; therefore, this Order TERMINATES  
4 Plaintiff's case. The Clerk of the Court shall close the file and terminate any pending motions.

5 The Clerk shall also send a printed copy of the complaint and all attachments (docket no. 1)  
6 to Plaintiff along with a copy of this Order.

7 IT IS SO ORDERED.

8 DATED: 8/25/10

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

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

4 CHUCK LEE FULTON,

5 Plaintiff,

6 v.

7 RENEE KANAN et al,

8 Defendant.

Case Number: CV10-00194 SBA

**CERTIFICATE OF SERVICE**

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 August 25, 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 said  
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
14 located in the Clerk's office.

15 Chuck Lee Fulton C-23377  
16 304-37 L  
17 P.O. Box 3535  
18 Norco, CA 92860

19 Dated: August 25, 2010

20 Richard W. Wieking, Clerk  
21 By: LISA R CLARK, Deputy Clerk  
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