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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ERIC L. GONZALEZ,

No. C 11-01691 CW (PR)

Plaintiff,

ORDER OF DISMISSAL; DENYING
MOTION FOR PRELIMINARY
INJUNCTION

v.

BILL ZIKA, et al.,

Defendants.

United States District Court
For the Northern District of California

Plaintiff, a state prisoner, has filed a pro se complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis under 28 U.S.C. § 1915. Plaintiff has not exhausted California's prison administrative process, however. Specifically, Plaintiff states in his complaint that his administrative appeal is pending at the first formal level of review. (Compl. at 2:5-6.)

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). A complaint may be dismissed by the court for failure to exhaust if a prisoner "conce[des] to nonexhaustion" and "no exception to exhaustion applies." Id. at 1120. Here, Plaintiff concedes he has not exhausted his administrative remedies. Accordingly, the complaint must be DISMISSED without prejudice to refile after exhausting California's prison administrative process. See McKinney v. Carey, 311 F.3d 1198, 1199-1201 (9th Cir. 2002) (action must be dismissed without prejudice unless prisoner exhausted available

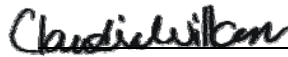
1 administrative remedies before he filed suit, even if prisoner
2 fully exhausts while suit is pending). Additionally, because the
3 complaint must be dismissed, Plaintiff's motion for a preliminary
4 injunction must be DENIED.

5 The Clerk of the Court shall enter judgment in accordance with
6 this Order and close the file.

7 This Order terminates Docket no. 2.

8 IT IS SO ORDERED.

9 Dated: 9/9/2011



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

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

4 ERIC LAMONT GONZALEZ,

5 Plaintiff,

6 v.

7 ERIC LAMONT GONZALEZ et al,

8 Defendant.

Case Number: CV11-01691 CW

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 September 9, 2011, 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 located
14 in the Clerk's office.

15 Eric L. Gonzalez E66196
16 Correctional Training Facility
17 P.O. Box 689
18 FW235 Low
19 Soledad, CA 93960-0689

20 Dated: September 9, 2011

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