

1 IN THE UNITED STATES DISTRICT COURT
2
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA
4
5 ERIC L. GONZALEZ, No. C 11-01691 CW (PR)
6 Plaintiff, ORDER OF DISMISSAL; DENYING
7 v. MOTION FOR PRELIMINARY
INJUNCTION
8
9 BILL ZIKA, et al.,
10 Defendants.

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

15 The Prison Litigation Reform Act of 1995 (PLRA) amended 42
16 U.S.C. § 1997e to provide that "[n]o action shall be brought with
17 respect to prison conditions under [42 U.S.C. § 1983], or any other
18 Federal law, by a prisoner confined in any jail, prison, or other
19 correctional facility until such administrative remedies as are
20 available are exhausted." 42 U.S.C. § 1997e(a). A complaint may
21 be dismissed by the court for failure to exhaust if a prisoner
22 "concede[s] to nonexhaustion" and "no exception to exhaustion
23 applies." Id. at 1120. Here, Plaintiff concedes he has not
24 exhausted his administrative remedies. Accordingly, the complaint
25 must be DISMISSED without prejudice to refiling after exhausting
26 California's prison administrative process. See McKinney v. Carey,
27 311 F.3d 1198, 1199-1201 (9th Cir. 2002) (action must be dismissed
28 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
10 Dated: 9/9/2011

Claudia wilken

CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ERIC LAMONT GONZALEZ,

Plaintiff,

Case Number: CV11-01691 CW

V.

ERIC LAMONT GONZALEZ et al,

Defendant.

CERTIFICATE OF SERVICE

ERIC LAMONT GONZALEZ et al,
Defendant.

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

That on September 9, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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

Dated: September 9, 2011

Richard W. Wiekling, Clerk
By: Nikki Riley, Deputy Clerk