

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA

3 GREGORY L. FLETCHER,  
4 Plaintiff,  
5 v.  
6 DOCTOR ERQUIZA,  
7 Defendant.  
8

Case No. [16-cv-04423-YGR](#) (PR)  
**ORDER TO SHOW CAUSE**

9 Plaintiff, a state prisoner, has filed a *pro se* complaint under 42 U.S.C. § 1983. He also  
10 seeks leave to proceed *in forma pauperis* under 28 U.S.C. § 1915. A review of the complaint  
11 reveals that Plaintiff has not exhausted California's prison administrative process, however.  
12 The Prison Litigation Reform Act of 1995 ("PLRA") amended 42 U.S.C. § 1997e to provide that  
13 "[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any  
14 other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until  
15 such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). Exhaustion  
16 is mandatory and no longer left to the discretion of the district court. *Ross v. Blake*, 136 S. Ct.  
17 1850, 1856-58 (2016); *Woodford v. Ngo*, 548 U.S. 81, 84 (2006) (citing *Booth v. Churner*, 532  
18 U.S. 731, 739 (2001)). "Prisoners must now exhaust all 'available' remedies, not just those that  
19 meet federal standards." *Id.* at 85. Even when the relief sought cannot be granted by the  
20 administrative process, i.e., monetary damages, a prisoner must still exhaust administrative  
21 remedies. *Id.* at 85-86 (citing *Booth*, 532 U.S. at 734).

22 The California Department of Corrections and Rehabilitation ("CDCR") provides that  
23 inmates and parolees "may appeal any policy, decision, action, condition, or omission by the  
24 department or its staff that the inmate or parolee can demonstrate as having a material adverse  
25 effect upon his or her health, safety, or welfare." Cal. Code Regs. tit. 15, § 3084.1(a). "Three  
26 levels of formal review are provided, and a prisoner exhausts the grievance process when he  
27 completes the third level." *Harvey v. Jordan*, 605 F.3d 681, 683 (9th Cir. 2010).

1 Here, Plaintiff concedes he has not exhausted his administrative remedies. Dkt. 4 at 2.<sup>1</sup>  
2 Furthermore, Plaintiff has not presented any extraordinary circumstances which might compel that  
3 he be excused from complying with PLRA’s exhaustion requirement. *Cf. Booth*, 532 U.S. at 741  
4 n.6 (courts should not read “futility or other exceptions” into section 1997e(a)).

5 A prisoner must exhaust his administrative remedies for constitutional claims prior to  
6 asserting them in a civil rights complaint. 42 U.S.C. § 1997e(a); *McKinney v. Carey*, 311 F.3d  
7 1198, 1199 (9th Cir. 2002). If a prisoner exhausts a claim after bringing it before the court, his  
8 subsequent exhaustion cannot excuse his earlier failure to exhaust. *Vaden v. Summerhill*, 449 F.3d  
9 1047, 1051 (9th Cir. 2006) (“[A prisoner] may initiate litigation in federal court only after the  
10 administrative process ends and leaves his grievances unredressed. It would be inconsistent with  
11 the objectives of the statute to let him submit his complaint any earlier than that.”) When the  
12 district court concludes that the prisoner has not exhausted administrative remedies on a claim,  
13 “the proper remedy is dismissal of the claim without prejudice.” *Wyatt v. Terhune*, 315 F.3d,  
14 1108, 1120 (9th Cir. 2003) *overruled on other grounds by Albino v. Baca*, 747 F.3d 1162, 1166  
15 (9th Cir. 2014) (en banc). However, Plaintiff will be provided one final opportunity to show cause  
16 within **twenty-eight (28) days**, why this case should not be dismissed without prejudice for failure  
17 to exhaust. Specifically, to avoid dismissal, Plaintiff needs to provide proof that extraordinary  
18 circumstances existed in order to excuse him from complying with PLRA’s exhaustion  
19 requirement. *See e.g., Ross*, 136 S. Ct. at 1859-60 (identifying “three kinds of circumstances in  
20 which an administrative remedy, although officially on the books, is not capable of use to obtain  
21 relief.”) **Failure to reply will result in dismissal without prejudice.**

22 Plaintiff’s request to proceed *in forma pauperis* will be granted in a separate written Order.  
23 IT IS SO ORDERED.

24 Dated: January 11, 2017

25   
26 YVONNE GONZALEZ ROGERS  
27 United States District Court Judge

28 <sup>1</sup> Page number citations refer to those assigned by the Court’s electronic case management filing system and not those assigned by Plaintiff.