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

|                    |   |                        |
|--------------------|---|------------------------|
| RICKEY R. MADISON, | ) | No. C 13-4681 LHK (PR) |
|                    | ) |                        |
| Plaintiff,         | ) | ORDER OF DISMISSAL     |
|                    | ) |                        |
| v.                 | ) |                        |
|                    | ) |                        |
| KEVIN CHAPPELL,    | ) |                        |
|                    | ) |                        |
| Defendant.         | ) |                        |
| _____              | ) |                        |

Plaintiff, proceeding *pro se*, filed a civil rights action pursuant to 42 U.S.C. § 1983, alleging that while housed in San Quentin State Prison, prison officials were deliberately indifferent to plaintiff’s serious medical needs. On March 24, 2014, the court reviewed plaintiff’s complaint and ordered him to show cause why this action should not be dismissed without prejudice for failure to exhaust administrative remedies. Plaintiff has not responded. As plaintiff has not shown that he exhausted his administrative remedies prior to filing suit, this action is dismissed without prejudice.

**DISCUSSION**

The Prison Litigation Reform Act (“PLRA”) provides 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). Exhaustion is mandatory and

1 no longer left to the discretion of the district court. *Woodford v. Ngo*, 126 S. Ct. 2378, 2382  
2 (2006) (citing *Booth v. Churner*, 532 U.S. 731, 739 (2001)). The PLRA exhaustion requirement  
3 requires “proper exhaustion” of available administrative remedies. *Woodford*, 126 S. Ct. at  
4 2387. The plain language of the PLRA requires that prior to filing suit, all “administrative  
5 remedies available [must be] exhausted.” 42 U.S.C. § 1997e(a). The Ninth Circuit has  
6 interpreted 1997e(a) to mean that an action *must* be dismissed unless the prisoner exhausted his  
7 available administrative remedies *before* he or she filed suit, even if the prisoner fully exhausts  
8 while the suit is pending. *McKinney v. Carey*, 311 F.3d 1198, 1199 (9th Cir. 2002).

9 Because exhaustion under Section 1997e(a) is an affirmative defense, a complaint may be  
10 dismissed for failure to exhaust only if failure to exhaust is obvious from the face of the  
11 complaint and/or any attached exhibits. *Wyatt v. Terhune*, 315 F.3d 1108, 1119-20 (9th Cir.  
12 2003). The court may dismiss a complaint for failure to exhaust where the prisoner “conce[des]  
13 to nonexhaustion” and “no exception to exhaustion applies.” *Id.* at 1120.

14 Here, it is obvious from the face of the complaint that plaintiff did not exhaust his  
15 administrative remedies and no exception to exhaustion is alleged or apparent in the complaint.  
16 Plaintiff concedes that he did not present his claims for review through the prison’s grievance  
17 procedure. Rather, he claims that waiting to go through the “regular appeal process” could cause  
18 serious and irreparable harm. (Compl. at 1-2.) Plaintiff admits that he did not pursue  
19 administrative relief at any level. (*Id.* at 1.) Because plaintiff did not exhaust his claims prior to  
20 filing this action, and plaintiff’s non-response to the order to show cause does not excuse his  
21 failure to exhaust, this action will be dismissed without prejudice.

## 22 CONCLUSION

23 The instant action is DISMISSED without prejudice to filing a new complaint in a new  
24 case containing claims that have been exhausted through California’s prison administrative  
25 process. The clerk shall enter judgment, terminate any pending motions and close the file.

26 IT IS SO ORDERED.

27 DATED: 4/16/14



\_\_\_\_\_  
LUCY H. KOH  
United States District Judge