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5	UNITED STATES DISTRICT COURT DISTRICT OF NEVADA	
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8	HABEEBULLAH RASHEED,	) 2:11-cv-01411-JCM-CWH
9	Plaintiffs,	) ) ORDER
10	VS.	ý) )
11	NEVADA DEPT. OF CORRECTIONS, et al.,	)
12	Defendants.	)
13	)	
14	Presently before the court is defendants' motion to dismiss plaintiff's complaint. (Doc. #12).	
15	Plaintiff Habeebullah Naeem Rasheed has filed an opposition (doc. #14) to which the defendants have	
16	replied (doc. #15).	
17	I. Background	
18	Plaintiff's complaint alleges that the Nevada Department of Corrections and several individual	
19	officers are engaged in a conspiracy and campaign of harassment to violate plaintiff's constitutional	
20	rights. Specifically, plaintiff contends that he was unlawfully discriminated against on the basis of	
21	religion when he was forced to shave his beard and disciplined for failing to cut his dread locks.	
22	Plaintiff asserts that as a "Nazarite, Rastafarian, and Levite Melchizedek High Priest," he cannot allow	
23	a razor to shave hair on his face and head. As a result of having to shave his beard and being disciplined	
24	for not cutting his hair, plaintiff seeks \$350,000,000 in punitive and compensatory damages.	
25	Plaintiff originally filed claims for religious discrimination and retaliation under the First	
26	Amendment, equal protection under the Fourteenth Amendment, conspiracy, and cruel and unusual	
27	punishment under the Eighth Amendment against The Nevada Department of Corrections, Southern	
28	Desert Correctional Center, the Ely Conservation Camp, Warden Williams and Correctional Officer	

Noah. After screening the complaint pursuant to the Prison Litigation Reform Act, 28 U.S.C. 1915A(a),
 this court dismissed the Eighth Amendment claim pursuant to Fed. R. Civ. P. 12(b)(6) and defendants
 Nevada Department of Corrections, Southern Desert Correctional Center, and Ely Conservation Camp
 pursuant to the Eleventh Amendment's sovereign immunity clause.

Accordingly, the only remaining claims consist of religious discrimination and retaliation under
the First Amendment, equal protection under the Fourteenth Amendment, and conspiracy. The only
remaining defendants are Warden Williams and Correctional Officer Noah.

8 Defendants now move to dismiss, arguing that plaintiff has failed to exhaust his administrative
9 remedies. Upon reviewing the exhibits filed by both plaintiff and defendant regarding plaintiff's
10 administrative grievances, this court agrees that plaintiff has failed to exhaust his remedies.

11 **II.** Discussion

Pro se pleadings must be liberally construed, especially where civil rights claims are involved. *Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th
Cir.1990).

15 Prisoners seeking relief under § 1983 must exhaust all available administrative remedies prior 16 to bringing suit. See 42 U.S.C. § 1997e(a) ("No 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 17 18 correctional facility until such administrative remedies as are available are exhausted."). In Woodford 19 v. Ngo, 548 U.S. 81, 93 (2006), the Supreme Court held that the PLRA requires "proper" exhaustion of 20 administrative remedies. The Court wrote, "Proper exhaustion demands compliance with an agency's 21 deadlines and other critical procedural rules." Id. at 90. This is "because no adjudicative system can 22 function effectively without imposing some orderly structure on the course of its proceedings." Id. at 23 90-91. The exhaustion requirement is mandatory regardless of the relief sought, and the available 24 remedies need not be "plain, speedy, and effective." See Booth v. Churner, 532 U.S. 731, 741 (2001).

A prison inmate in Nevada satisfies the administrative exhaustion requirement by following the procedures set forth in NDOC Administrative Regulation 740. This regulation expressly mandates that inmates "shall file an informal grievance" within six months "if the issue involves personal property

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damage or loss, personal injury, medical claims or any other tort claims, including civil rights claims."
It further warns that "[f]ailure by the inmate to submit a proper Informal Grievance form" within this
time frame "shall constitute abandonment" of the inmate's right to pursue resolution of that claim at any
level of the inmate grievance procedure. Thus, an inmate in the custody of the NDOC, who fails to
timely file a proper informal grievance, has abandoned his right to pursue resolution of any such claims
through the inmate grievance procedure.

When no other administrative remedy is available, the exhaustion requirement is deemed
fulfilled. *Booth*, 532 U.S. at 736 n. 4. The obligation to exhaust persists as long as some remedy is
available; when that is no longer the case, the prisoner need not further pursue the grievance. *Brown v. Valoff*, 422 F.3d 926, 934-35 (9th Cir. 2005).

Non-exhaustion under § 1997e(a) is an affirmative defense. *Jones v. Bock*, 549 U.S. 199, (2007); *Wyatt v. Terhune*, 315 F.3d 1108, 1119 (9th Cir. 2003). Because there can be no absence of exhaustion
unless some relief remains available, a movant claiming lack of exhaustion must demonstrate that
pertinent relief remained available, whether at unexhausted levels or through awaiting the results of the
relief already granted as a result of that process. *Brown*, 422 F.3d at 936-37 (9th Cir. 2005).

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## Claims Based on the Removal of Plaintiff's Beard

17 With respect to plaintiff's allegations regarding the removal of his beard, plaintiff never filed a 18 grievance challenging the grooming policy or alleged threats from staff. Plaintiff argues that he was 19 prevented from filing a grievance because he feared retaliation from the alleged perpetrator of the 20 threats. Opp. at 7-8. The court finds the charge of feared retaliation unpersuasive. Plaintiff was 21 subsequently transferred away from the facility where his beard was shorn, and away from the individual 22 that he feared, therefore he could have filed a grievance without fear of retaliation (as he did with regards 23 to his complaint regarding his dread locks). As plaintiff failed to even initiate, let alone exhaust, his 24 administrative remedies with respect to the shaving of his beard, the court finds that defendants have met 25 their burden of raising and proving the absence of exhaustion of plaintiff's First Amendment, Fourteenth Amendment, and conspiracy claims with respect to the removal of plaintiff's beard. See 42 U.S.C. § 26 1997e(a). 27

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## Claims Based on Disciplinary Actions taken with Regard to the Length of Plaintiff's Hair

Plaintiff's claims relating to the disciplinary actions imposed for his refusal to cut his dread locks must similarly be dismissed for failure to exhaust administrative remedies. Plaintiff complains of being "written up" for six disciplinary infractions while incarcerated at Ely Conservation Camp, resulting in an increase in plaintiff's custody level. Defendants' motion, as well as plaintiff's opposition, attach the write ups as well as other documents from plaintiff's inmate file. The attached exhibits establish that plaintiff never properly appealed the disciplinary write ups, and therefore failed to exhaust his administrative remedies.

9 The first grievance plaintiff filed in relation to the length of his hair was filed on April 7, 2011. See Mot., Ex. D, Grievance #8660. This grievance was denied. See id. Rather than appealing the 10 11 grievance, plaintiff filed a second grievance voicing the same complaint. See id., Ex. E, Grievance 12 #8882. This second grievance was denied on the basis that it was a duplicate. See id. Rather than file a second, duplicative grievance, plaintiff was required to appeal his initial grievance up the chain. 13 Grievance #8860 clearly stated such, where it instructed "A FIRST LEVEL GRIEVANCE MAY BE 14 PURSUED IN THE EVEN THE INMATE DISAGREES." Ex. D. Rather than follow these 15 16 instructions, plaintiff decided to file a second grievance. Though he appealed his denials of the second 17 grievance, he never appealed the denial of the first (operative) grievance.

18 The second grievance, and its successive appeals were properly denied as duplicative. Therefore, 19 plaintiff's continued escalation of the grievance up the various levels of command were unhelpful to his 20 cause. Plaintiff should have appealed his first, operative grievance. By failing to do so, plaintiff 21 abandoned his administrative remedies and failed to properly exhaust.

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IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendants' motion to dismiss
(doc. #12) be, and the same hereby is, GRANTED.

DATED May 17, 2012.

Accordingly,

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alus C. Mahan

UNITED STATES DISTRICT JUDGE