

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

5 Accordingly, the only remaining claims consist of religious discrimination and retaliation under
6 the First Amendment, equal protection under the Fourteenth Amendment, and conspiracy. The only
7 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**

12 Pro se pleadings must be liberally construed, especially where civil rights claims are involved.
13 *Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th
14 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
17 under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other
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).

25 A prison inmate in Nevada satisfies the administrative exhaustion requirement by following the
26 procedures set forth in NDOC Administrative Regulation 740. This regulation expressly mandates that
27 inmates “shall file an informal grievance” within six months “if the issue involves personal property
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1 damage or loss, personal injury, medical claims or any other tort claims, including civil rights claims.”
2 It further warns that “[f]ailure by the inmate to submit a proper Informal Grievance form” within this
3 time frame “shall constitute abandonment” of the inmate’s right to pursue resolution of that claim at any
4 level of the inmate grievance procedure. Thus, an inmate in the custody of the NDOC, who fails to
5 timely file a proper informal grievance, has abandoned his right to pursue resolution of any such claims
6 through the inmate grievance procedure.

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

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

16 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
26 Amendment, and conspiracy claims with respect to the removal of plaintiff’s beard. *See* 42 U.S.C. §
27 1997e(a).

