

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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DAVID A. HANO,

Case No. 2:19-cv-02246-GMN-EJY

Plaintiff,

V.

STATE OF NEVADA, EX REL NEVADA  
DEPARTMENT OF CORRECTIONS, *et al.*,

## Defendants.

## ORDER

10 Pending before the Court is Defendants' Motion to Reconsider Magistrate Judge's Order.  
11 ECF No 196. The Court has considered the Motion, Plaintiff's Response (ECF No. 197), and  
12 Defendants' Reply. ECF No. 199.

## I. BACKGROUND

14 Plaintiff is an incarcerated person with a heart condition who, among other claims, has  
15 repeatedly alleged he does not timely receive medication prescribed for his condition. On June 23,  
16 2022, the undersigned ordered Defendants to file a status report regarding Plaintiff's Clopidogrel  
17 prescription. ECF No. 194 at 4. On July 1, 2022, Defendants filed a Motion to Reconsider the Order  
18 arguing that the Second Amended Complaint ("SAC"), which Defendants contend is the operative  
19 complaint, makes no mention of Clopidogrel. Defendants argue the Court cannot "grant any relief  
20 with respect to Clopidogrel." Defendants cite *Woodford v. Ngo* for the proposition that inmates are  
21 required to "exhaust administrative remedies" before they may seek relief in federal court. 548 U.S.  
22 81, 90-91 (2006).

23 Unresolved in this action is Defendants' previous Objection to Magistrate Judge's Order  
24 regarding Plaintiff's SAC. ECF No. 177. On February 22, 2022, Plaintiff filed a Motion to  
25 Withdraw the SAC, ECF No. 174, which the Court granted ordering the First Amended Complaint  
26 ("FAC") operative. ECF No. 177 at 1. Defendants filed an Objection to the Order on March 8,  
27 2022. ECF No. 178. Defendants claim that the SAC is the operative complaint for this proceeding.  
28 *Id.* at 9. Defendants' Objection is pending.

1           **II. DISCUSSION**

2           In *Woodford*, the Supreme Court explained that exhaustion requires complying with a  
3 prison's "critical procedural rules" that is justified by the need to "impos[e] some orderly structure  
4 on the course of its proceedings." 548 U.S. at, 90-91. Where inmates take reasonably appropriate  
5 steps to exhaust, but are precluded from doing so by a prison's erroneous failure to process the  
6 grievance, courts have deemed the exhaustion requirement satisfied. *Andres v. Marshall*, 867 F.3d  
7 1076, 1079 (9th Cir. 2017); *Sapp v. Kimbrell*, 623 F.3d 813, 823 (9th Cir. 2010) ("If prison officials  
8 screen out an inmate's appeals for improper reasons, the inmate cannot pursue the necessary  
9 sequence of appeals, and administrative remedies are therefore plainly unavailable."). *See also*  
10 *Fordley v. Lizarraga*, 18 F.4th 344, 352 (9th Cir. 2021). Where no administrative relief is available,  
11 requiring exhaustion contradicts the PLRA's purpose and it is not required. *See Andres*, 867 F.3d at  
12 1079.

13           Here, Plaintiff's FAC alleges he filed a kite for a variety of medications, including  
14 Clopidogrel, on October 25, 2019. ECF No. 24-1 at 17. He later alleges he filed an emergency  
15 grievance, informal grievance, first-level grievance, and second-level grievance. *Id.* According to  
16 Nevada Department of Corrections Administrative Regulation 740, these appear to be the steps  
17 required to fully exhaust administrative procedure and therefore, based on the content of the FAC,  
18 Plaintiff met the burden established in *Woodford*. 548 U.S. at 90-91. As Defendants contend, this  
19 burden is not met in the SAC as Plaintiff included the drug among a list of medications not  
20 administered, but did not indicate any attempts to use administrative procedures to rectify a problem  
21 with obtaining the drug. ECF No. 117. As such, Plaintiff fails to meet the administrative exhaustion  
22 requirement. *Woodford*, 548 U.S. at 90-91. Plaintiff's Reply to Defendants' Motion is based upon  
23 the FAC and does not address the shortcomings in the SAC. ECF No. 197.

24           Which of Plaintiff's Complaints is the operative complaint in this case is an issue that remains  
25 outstanding. Thus, the undersigned is not able to determine whether Plaintiff exhausted  
26 administrative procedures and, thus, whether the Court's June 23, 2022 Order regarding Clopidogrel  
27 should be reconsidered. However, the Court notes it has *sua sponte* power to stay reconsideration  
28 of its prior order as presented in the instant Motion. The inherent power of the Court to control its

1 docket includes the power to do so in the interest of judicial economy. *Ali v. Trump*, 241 F. Supp.  
2 3d 1147, 1152 (W.D. Wash., 2017) *citing Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936); *Clinton*  
3 *v. Jones*, 520 U.S. 681, 706 (1997) (“The District Court has broad discretion to stay proceedings as  
4 an incident to its power to control its own docket.”). “Every court has the inherent power to stay  
5 causes on its docket with a view to avoiding duplicative litigation, inconsistent results, and waste of  
6 time and effort by itself, the litigants and counsel.” *Stern v. United States*, 563 F. Supp. 484, 489  
7 (D. Nev. 1983) (citations omitted).

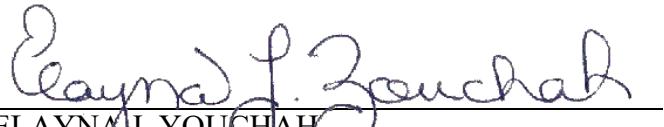
8 The Court finds that determining whether Plaintiff’s FAC or SAC is operative in this matter  
9 is necessary proceedings before a decision on the Motion for Reconsideration can be issued. Given  
10 this circumstance, reaching a decision based on the content of either Complaint could lead to an  
11 erroneous result that will only further complicate this dispute. The best interest of the Court and the  
12 litigants is served through staying the Court’s Order regarding Clopidogrel (ECF No. 194) until such  
13 a decision is reached on the pending Objection regarding which is the operative Complaint.

14 **III. ORDER**

15 Accordingly, IT IS HEREBY ORDERED that Defendants’ Motion to Reconsider Magistrate  
16 Judge’s Order (ECF No. 196) is GRANTED to the extent that the Court STAYS the duty to comply  
17 with its Order in ECF No. 194 until such time as there is a ruling on the issue of which of Plaintiff’s  
18 Complaints is the operative complaint in this matter.

19 Dated this 29th day of July, 2022

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ELAYNA J. YOUCAH  
UNITED STATES MAGISTRATE JUDGE