

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

**Edwin Solorzano Perez v. Contra Costa County Sheriff Department,
et al.**

Perez · No. 23-cv-04749-JSW · Decided March 24, 2025

OPINION

Perez v. Contra Costa County Sheriff Department

PER CURIAM.

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4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 EDWIN SOLORZANO PEREZ, Case No. 23-cv-04749-JSW 8 Plaintiff,

ORDER GRANTING MOTION FOR

9 v. SUMMARY JUDGMENT

10 CONTRA COSTA COUNTY SHERIFF Re: Dkt. No. 35

DEPARTMENT, et al., 11 Defendants. 12

INTRODUCTION

13 Plaintiff, a California prisoner proceeding pro se, filed this civil rights complaint under 42 14
U.S.C. ' 1983 against Contra Costa County Sherriff's Department regarding the conditions of his
15 confinement at the county jail. Defendant filed a motion for summary judgment arguing, inter
16 alia, Plaintiff did not exhaust his administrative remedies. Plaintiff did not file an opposition 17
despite being warned of the potential adverse consequences of not doing so. For the reasons 18
discussed below, the motion for summary judgment is GRANTED.

19 DISCUSSION

20 I. Standard of Review 21 Summary judgment is proper where the pleadings, discovery and
affidavits show that there 22 is "no genuine issue as to any material fact and that the moving party
is entitled to judgment as a 23 matter of law." Fed. R. Civ. P. 56(c). Material facts are those which
may affect the outcome of 24 the case. Anderson v. Liberty Lobby, Inc., 477 U.S. 242,248 (1986).
A dispute as to a material 25 fact is genuine if there is sufficient evidence for a reasonable jury to
return a verdict for the 26 nonmoving party. Id. 27 The moving party for summary judgment bears
the initial burden of identifying those 1 issue of material fact. Celotex Corp.v. Cattrett, 477 U.S.
317, 323 (1986). When the moving 2 party has met this burden of production, the nonmoving
party must go beyond the pleadings and, 3 by its own affidavits or discovery, set forth specific
facts showing that there is a genuine issue for 4 trial. Id. If the nonmoving party fails to produce
enough evidence to show a genuine issue of 5 material fact, the moving party wins. Id. 6 At

summary judgment, the judge must view the evidence in the light most favorable to the 7 nonmoving party. *Tolan v. Cotton*, 134 S. Ct. 1861, 1865 (2014). If more than one reasonable 8 inference can be drawn from undisputed facts, the trial court must credit the inference in favor of 9 the nonmoving party. *Hunt v. Cromartie*, 526 U.S. 541, 552 (1999). 10 Where, as here, a summary judgment is unopposed, a district court may not grant the 11 motion solely on that basis. *Cristobal v. Siegel*, 26 F.3d 1488, 1494-95 & n.4 (9th Cir. 1994). The 12 court may, however, grant an unopposed motion for summary judgment if the movant's papers are 13 themselves sufficient to support the motion and do not on their face reveal a genuine issue of 14 material fact. See *Carmen v. San Francisco Unified School District*, 237 F.3d 1026, 1029 (9th 15 Cir. 2001). A verified complaint may be used as an opposing affidavit under Rule 56, as long as it

16 is based on personal knowledge and sets forth specific facts admissible in evidence. See 17 *Schroeder v. McDonald*, 55 F.3d 454, 460 & nn.10-11 (9th Cir. 1995). The operative complaint, 18 the amended complaint, is not verified, but the original complaint is. 19 Exhaustion must ordinarily be decided in a summary judgment motion. *Albino v. Baca*, 20 747 F.3d 1162, 1166 (9th Cir. 2014) (en banc). If undisputed evidence viewed in the light most 21 favorable to the prisoner shows a failure to exhaust, a defendant is entitled to summary judgment 22 under Rule 56. *Id.* at 1166. 23 II. Analysis 24 Plaintiff claims he fell and injured his back when he was cleaning the show. He claims 25 Defendant violated his rights its policies caused him not to receive non-slip footwear while 26 cleaning and not to receive adequate medical care for his injuries. Defendant has presented 27 evidence that Plaintiff did not pursue these claims through his available administrative remedies. 1 The PLRA provides that "[n]o action shall be brought with respect to prison conditions 2 under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or 3 other correctional facility until such administrative remedies as are available are exhausted." 42 4 U.S.C. § 1997e(a). Exhaustion is mandatory and not left to the discretion of the district court. 5 *Woodford v. Ngo*, 548 U.S. 81, 84 (2006) (citing *Booth v. Churner*, 532 U.S. 731, 739 (2001)). 6 Courts may not create their own "special circumstances" exceptions to the exhaustion 7 requirement. *Ross v. Blake*, 578 US. 632, 638 (2016). 8 The Contra Costa County Sherriff's Department's procedures for inmates to pursue 9 administrative remedies for the conditions of their confinement begin with an informal oral 10 complaint to jail personnel, followed by a formal written grievance, and then an appeal to 11 progressive levels of the jail's chain of command. Defendant has presented evidence that Plaintiff 12 never filed a formal grievance or appeal regarding the lack of non-slip footwear or inadequate 13 medical care for his back injury. Plaintiff has presented no evidence to the contrary. In his 14 original (verified) complaint,¹ he states he wrote "many" grievances, but the "issue always 15 continues," or "sometimes they don't answer." (ECF No. 1 at 2.) Notably, Plaintiff does not state 16 he presented any administrative grievances or appeals regarding the claims herein, i.e. the non-slip 17 shoes and medical care for his back injury. Moreover, the court may not will not read futility or 18 other

exceptions into statutory exhaustion requirement” Booth, 532 U.S. at 741 n.6. To the extent 19 Plaintiff asserts his history of pursuing administrative remedies at the jail convinced him doing so 20 regarding his claims here would be futile, this does not excuse his failure to exhaust. 21 As there is no dispute that Plaintiff did not pursue his available administrative remedies 22 regarding his claims, there are no triable issues that preclude granting Defendant’s motion for 23 summary judgment on exhaustion grounds.2

24 CONCLUSION

25 1 The amended complaint is not verified and does not address exhaustion. Although the original 26 complaint was superseded by his amended complaint, as it was verified and out of an abundance of caution, the Court considers the factual allegations therein to be evidence to the extent they are 27 based upon Plaintiff’s personal knowledge.] For the foregoing reasons, Defendants’ motion for summary judgment is GRANTED, and 2 || Plaintiffs claims are DISMISSED without prejudice. 3 The Clerk shall enter judgment and close the file. 4 This order disposes of Docket No. 35. 5 IT IS SO ORDERED. 6 Dated: March 24, 2025 “| C/ □□□□ 8 \1 / f/f JEY REY S. WHITE

9 fs Upfted State// District Judge 10 / 1] 13 16 Oo Z 18 19 20 21 22 23 24 25 26 27 28