

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Keller v. Degough

Case No. 1:22-cv-01487-BAM (PC) (E.D. Cal. Sept. 30, 2025) · No. 1:22-cv-01487-BAM (PC) · Decided
September 30, 2025

OPINION

Degough

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 PAUL STEPHEN KELLER, Case No. 1:22-cv-01487-BAM (PC) 12 Plaintiff, ORDER
GRANTING DEFENDANT’S

MOTION FOR SUMMARY JUDGMENT

13 v. FOR FAILURE TO EXHAUST

ADMINISTRATIVE REMEDIES

14 DEGOUGH,

(ECF No. 40) 15 Defendant. 16 17 I. Background 18 Plaintiff Paul Stephen Keller (“Plaintiff”) is
a state prisoner proceeding pro se and in 19 forma pauperis in this civil rights action pursuant to
42 U.S.C. § 1983. This action proceeds 20 against Defendant Degough (“Defendant”) for
deliberate indifference to conditions of 21 confinement in violation of the Eighth Amendment. All
parties have consented to United States 22 Magistrate Judge jurisdiction. (ECF No. 34.) 23 On
June 21, 2024, Defendant filed a motion for summary judgment on the ground that the 24
undisputed facts in the record prove that Plaintiff failed to properly exhaust available 25
administrative remedies before filing suit, as required by the Prison Litigation Reform Act, 42 26
U.S.C. § 1997e(a).1 (ECF No. 40.) Plaintiff filed an opposition on July 15, 2024. (ECF No. 43.)
27 1 Concurrent with this motion, Plaintiff was provided with notice of the requirements for
opposing a motion for summary judgment. See *Woods v. Carey*, 684 F.3d 934 (9th Cir. 2012);
Rand v. Rowland, 154 F.3d 952, 957 (9th

28 Cir. 1988); *Klinge v. Eikenberry*, 849 F.2d 409, 411–12 (9th Cir. 1988). (ECF No. 40-3.)

1 Defendant filed a reply on July 30, 2024. (ECF No. 44.) 2 The motion for summary judgment is
deemed submitted. Local Rule 230(l). 3 II. Defendant’s Motion for Summary Judgment 4 A.
Statutory Exhaustion Requirement

5 Section 1997e(a) of the Prison Litigation Reform Act of 1995 provides that “[n]o action

6 shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal
7 law, by a prisoner confined in any jail, prison, or other correctional facility until such 8

administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). Exhaustion is 9 required regardless of the relief sought by the prisoner and regardless of the relief offered by the 10 process, *Booth v. Churner*, 532 U.S. 731, 741 (2001), and the exhaustion requirement applies to 11 all prisoner suits relating to prison life, *Porter v. Nussle*, 534 U.S. 516, 532 (2002). 12 The failure to exhaust is an affirmative defense, and the defendant bears the burden of 13 raising and proving the absence of exhaustion. *Jones v. Bock*, 549 U.S. 199, 216 (2007); *Albino*, 14 747 F.3d at 1166. “In the rare event that a failure to exhaust is clear on the face of the complaint, 15 a defendant may move for dismissal under Rule 12(b)(6).” *Albino*, 747 F.3d at 1166. Otherwise, 16 the defendants must produce evidence proving the failure to exhaust, and they are entitled to 17 summary judgment under Rule 56 only if the undisputed evidence, viewed in the light most 18 favorable to the plaintiff, shows they failed to exhaust. *Id.* 19 Defendant must first prove that there was an available administrative remedy, and that 20 Plaintiff did not exhaust that available remedy. *Williams v. Paramo*, 775 F.3d 1182, 1191 (9th

21 Cir. 2015) (citing *Albino*, 747 F.3d at 1172) (quotation marks omitted). The burden then shifts to

22 Plaintiff to show something in his particular case made the existing and generally available 23 administrative remedies effectively unavailable to him. *Williams*, 775 F.3d at 1191 (citing 24 *Albino*, 747 F.3d at 1172) (quotation marks omitted). The ultimate burden of proof on the issue 25 of exhaustion remains with Defendant. *Id.* (quotation marks omitted). 26 B. Summary Judgment Standard 27 Any party may move for summary judgment, and the Court shall grant summary judgment 28 if the movant shows that there is no genuine dispute as to any material fact and the movant is 1 entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a) (quotation marks omitted); *Albino*, 2 747 F.3d at 1166; *Wash. Mut. Inc. v. United States*, 636 F.3d 1207, 1216 (9th Cir. 2011). Each 3 party’s position, whether it be that a fact is disputed or undisputed, must be supported by 4 (1) citing to particular parts of materials in the record, including but not limited to depositions, 5 documents, declarations, or discovery; or (2) showing that the materials cited do not establish the 6 presence or absence of a genuine dispute or that the opposing party cannot produce admissible 7 evidence to support the fact. Fed. R. Civ. P. 56(c)(1) (quotation marks omitted). The Court may 8 consider other materials in the record not cited to by the parties, although it is not required to do 9 so. Fed. R. Civ. P. 56(c)(3); *Carmen v. S.F. Unified Sch. Dist.*, 237 F.3d 1026, 1031 (9th Cir. 10 2001); accord *Simmons v. Navajo County, Ariz.*, 609 F.3d 1011, 1017 (9th Cir. 2010). 11 The defendant bears the burden of proof in moving for summary judgment for failure to 12 exhaust, *Albino*, 747 F.3d at 1166, and must “prove that there was an available administrative 13 remedy, and that the prisoner did not exhaust that available remedy,” *id.* at 1172. If the defendant 14 carries his burden, the burden of production shifts to the plaintiff “to come forward with evidence 15 showing that there is something in his particular case that made the existing and generally 16 available administrative remedies effectively unavailable to him.” *Id.* “If undisputed evidence 17 viewed in the light most favorable to the prisoner shows a failure to exhaust, a

defendant is 18 entitled to summary judgment under Rule 56.” Id. at 1166. However, “[i]f material facts are 19 disputed, summary judgment should be denied, and the district judge rather than a jury should 20 determine the facts.” Id. 21 III. Discussion 22 A. Summary of CDCR’s Administrative Review Process 23 Effective June 1, 2020, and during the relevant time, the California prison grievance 24 system had two levels of review.² Cal. Code Regs. tit. 15, § 3480, et seq. Pursuant to this 25 system, an inmate may “dispute a policy, decision, action, condition, or omission by the 26 Department or departmental staff that causes some measurable harm to their health, safety, or 27 2 The inmate grievance process was further revised by emergency regulations that took effect in January 2022 and by 28 subsequent emergency regulations. Cal. Code Regs. tit. 15 §§ 3480–3487. 1 welfare.” Id. § 3481(a). Inmate claimants are required to “describe all information known and 2 available to the claimant regarding the claim, including key dates and times, names and titles of 3 all involved staff members (or a description of those staff members), and names and titles of all 4 witnesses, to the best of the claimant’s knowledge[.]” Id. § 3482(c). In response, the inmate 5 claimant will receive a written decision from the Institutional or Regional Office of Grievances 6 clearly explaining the reasoning for the Reviewing Authority’s decision as to each claim. Id. § 7 3481(a). The inmate claimant has the ability to submit a written appeal concerning one or more 8 claims to dispute the decision by the Institutional or Regional Office of Grievances, and in 9 response will receive a written decision from the Office of Appeals clearly explaining the 10 reasoning for the decision as to each claim. Id. Generally, “[c]ompletion of the review process 11 by the Office of Appeals constitutes exhaustion of all administrative remedies available to a 12 claimant within the Department.” Id. § 3486. 13 B. Undisputed Material Facts (UMF)³

14 PLAINTIFF’S ALLEGATIONS

15 1. Plaintiff Paul Stephen Keller (CDCR No. AT8673) (“Plaintiff”) is an inmate in the 16 custody of the California Department of Corrections and Rehabilitation (“CDCR”). (ECF 17 No. 1 (“Compl.”) at 1; ECF No. 40-5 (“Marquez Decl.”) ¶ 3; ECF No. 40-4 (“Moseley 18 Decl.”) ¶ 7.) 19 2. Plaintiff filed this action on November 16, 2022, regarding alleged water contamination at 20 Wasco State Prison (“Wasco”). (Compl.) 21 3. Plaintiff’s complaint alleges the following: 22 Defendant S. DeGough has relayed false information to the institution’s staff 23 regarding the real risks and dangers of the contaminant 1,2,3–Trichloropropane, which shows blatant disregard to Plaintiff’s life, safety and health. 24 If Defendant DeGough properly monitored the increase of 1,2,3–TCP, and 25 correctly informed the institution’s administration, Plaintiff would not be utilizing 26 3 See Defendant’s Separate Statement of Undisputed Facts in Support of Motion for Summary Judgment Re: 27 Exhaustion, (ECF No. 40-2), and Plaintiff’s Response to the Defendant’s Statement of Undisputed Facts, (ECF No. 43, pp. 21–26). Unless otherwise indicated, disputed and immaterial facts are omitted from this statement and 28 relevant objections are overruled. 1 contaminated water nor would he be infected by numerous internal illnesses. 2 Defendant DeGough failed in his duty(ies) as the contractor and supervising plant

manager, and failed to circumvent the egregious failure(s) of past contractors, 3 regulations, and plans that showed to be extreme risk[s] to human lives. In his 4 authority of the water quality, and the water operations of the institution, he is supposed to make sure that the quality of water is safe, and operation of the water 5 ran properly and correctly. 6 Defendant DeGough is the author of a memo/notice that is vague, and continues 7 to circulate at Wasco State Prison with minimum updates (which are supposed to be posted every quarter of the year) to the real risk(s) and danger(s) to Plaintiff 8 and the institution's population. Defendant DeGough has failed to properly inform supervisory personnel at the institution about potential remedies and 9 techniques. Defendant DeGough exhibited incompetence that is beyond one seated in position. 10 (See Compl. at 5, 17–19; see also ECF No. 14 (“Screening Order”).) 11

4. In screening the complaint, the Court found a cognizable claim against Defendant for 12 deliberate indifference to conditions of confinement in violation of the Eighth 13 Amendment. The Court dismissed all other claims and Defendants, and Plaintiff 14 consented to this dismissal. (Screening Order; ECF No. 15 (“Notice to Proceed on 15 Cognizable Claims”); ECF No. 22 (“Order Directing Service”).) 16

THE INMATE APPEALS PROCESS

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5. At all relevant times, CDCR and Wasco provided inmates with an administrative process 18 to grieve “any policy, decision, action, condition, or omission by the [CDCR] or its staff 19 that the inmate . . . can demonstrate as having a material adverse effect upon his or her 20 health, safety, or welfare.” (Marquez Decl. ¶ 3; Compl. at 5; Moseley Decl. ¶¶ 2–5); Cal. 21 Code Regs. tit. 15, § 3084.1(a) (repealed eff. June 1, 2020). 22

6. Before June 1, 2020, a CDCR inmate was required to follow the procedures set forth in 23 California Code of Regulations, title 15, sections 3084–3085 (repealed eff. June 1, 2020). 24 It required the inmates to submit a grievance form describing the “specific issue and 25 action requested,” include “all facts known and available” regarding the issue, and “list all 26 staff member(s) involved” or provide other information that would help prison staff to 27 identify the relevant staff members. (Marquez Decl. ¶¶ 3, 4; Moseley Decl. ¶ 6); Cal. 28 1 Code Regs. tit. 15, §§ 3084–3085, §§ 3084.2(a), (a)(3)–(4) (repealed eff. June 1, 2020). 2 7. Grievances had to be submitted within thirty calendar days from the date the inmate 3 learned of the issue or the relevant event occurred. The inmates had to proceed through 4 three levels of review and receive a decision at the final level to complete the process and 5 exhaust administrative remedies. Cal. Code Regs. tit. 15, §§ 3084.8(b)(1), 3084.1(b), 6 3084.7(d)(3) (repealed eff. June 1, 2020). 7 8. The electronic database used for tracking grievances was called the Inmate/Parolee 8 Appeals Tracking System – Level I and II (“IATS”). Grievances that were rejected or 9 cancelled may be reflected in IATS as a single line entry without information related to 10 any level of review. (Marquez Decl. ¶ 7); Cal. Code Regs. tit. 15, §§ 3084.6(b), 3084.6(c) 11 (repealed eff. June 1, 2020). 12 9. If Plaintiff submitted a grievance to another institution regarding an event that

occurred at 13 Wasco, the institution would have forwarded the grievance to Wasco for review and the 14 grievance would be reflected on Wasco's IATS printouts. (Marquez Decl. ¶ 10, Ex. 1.) 15 10. As of June 1, 2020, an inmate is required to follow the procedures set forth in California 16 Code of Regulations, title 15, sections 3480–3487 (eff. June 1, 2020). An inmate may 17 submit a written grievance containing one or more claims to dispute a policy, decision, 18 action, condition, or omission by CDCR or CDCR staff that causes some measurable harm 19 to the inmate's "health, safety, or welfare." The grievance process has two levels of 20 review, and it requires the inmates to submit a grievance in writing to the Institutional 21 Office of Grievances within thirty days. If an inmate wishes to appeal the Office of 22 Grievances' decision, they may do so in writing within thirty days. (Id. ¶ 5; Moseley 23 Decl. ¶ 6); Cal. Code Regs. tit. 15, §§ 3480–3487, §§ 3481(a), 3482, 3482(a)(1) and (b), 24 3482(a)(2) and (c), 3485(a)–(b) (eff. June 1, 2020). 25 11. Subsequent to June 1, 2020, inmates are required to describe all information known and 26 available regarding the claim, including key dates and times, names and titles of all 27 involved staff (or descriptions of those staff members), and names and titles of all 28 witnesses to the best of the claimant's knowledge. Inmates must also include any and all 1 supporting documents available. Claims may be rejected for any of the reasons including 2 failure to submit the claim within the applicable time frames. Completion of the review 3 process by the Office of Appeals constitutes exhaustion of all administrative remedies 4 available to a claimant. A claim is not exhausted if it was disallowed or rejected. 5 (Marquez Decl. ¶ 6); Cal. Code Regs. tit. 15 §§ 3482(c)(2), 3482(c)(4), 3487, 3486(m), 6 3482(d)(3), 3485(d)(3), 3487(a) (eff. June 1, 2020). 7 12. Wasco maintains a record of all inmate grievances filed at this institution. After June 8 2020, the electronic database used for tracking grievances is called the Strategic Offender 9 Management System/Appeal Tracking ("SOMS"). (Marquez Decl. ¶ 7.) 10 13. Subsequent to January 2022, emergency regulations took effect further revising the inmate 11 grievance process. These regulations are still contained in Cal. Code Regs. tit. 15 12 §§ 3480–3487. Because the relevant time frame for Plaintiff's grievances encompasses 13 the emergency regulations, those regulations will be addressed to the extent they are 14 applicable to Plaintiff's relevant grievances/appeals. (Id. ¶ 8); Cal. Code Regs. tit. 15 15 §§ 3480–3487 (eff. 2022). 16 14. Post-June 2020 grievances are reflected on a single print out and in a single system, 17 regardless of the institution involved. All grievance coordinators have access to all new 18 grievances and can testify as to their authenticity, regardless of the institution handling the 19 grievance. (Marquez Decl. ¶ 11, Ex. 2.) 20 15. The Office of Appeals receives, reviews, and maintains all non-medical inmate grievances 21 at the final level of review. A final decision by the Office of Appeals generally exhausts 22 an inmate grievance. (Moseley Decl. ¶¶ 2, 5.) 23 16. Between August 9, 2018, the date of Plaintiff's admission at Wasco, and November 16, 24 2022, the date Plaintiff filed his operative complaint, Plaintiff submitted only one 25 grievance (Log No. 184116) relevant to the allegations in his complaint to Wasco's Office 26 of Grievances and the Office of Appeals. (Marquez Decl. ¶¶ 12, 13, Exs. 2, 3; Moseley 27 Decl. ¶¶ 9, 10.) 28 ///

1 THE RELEVANT GRIEVANCES/APPEALS

2 17. In grievance 184116, Plaintiff alleged that he received a May 6, 2021 notice listing 3
Defendant's name that the water used by inmates at Wasco was contaminated. The 4 grievance did
not mention Defendant. Grievance 184116 was dated November 3, 2021. 5 Wasco's Office of
Grievances rejected grievance 184116 because Plaintiff failed to 6 submit it within thirty days
from the date he learned of the contamination issue. (Marquez 7 Decl. ¶ 13, Ex. 3); Cal. Code
Regs. tit. 15 §§ 3482(b), 3487(a)(1) (eff. June 1, 2020). 8 18. Plaintiff appealed the decision
rejecting grievance 184116 to the Office of Appeals. 9 Plaintiff alleged that he was exposed to
contaminated water at Wasco as far back as early 10 2018. Plaintiff also alleged that the Office of
Grievances improperly rejected Plaintiff's 11 underlying grievance. Plaintiff made no reference to
Defendant in this appeal. The Office 12 of Appeals' time to respond expired before it was able to
render a decision. The Office of 13 Appeals sent Plaintiff a letter dated January 15, 2022, stating
that the time to respond 14 expired and that Plaintiff would not be receiving any further response.
As a result, the 15 decision by the Office of Grievances served as the Department's final response
to 16 Plaintiff's allegations. (Moseley Decl. ¶ 9, Ex. 4); Cal. Code Regs. tit. 15 §§ 3482(b), 17
3487(a)(1), and 3487(a)(3) (eff. June 1, 2020). 18 19. Plaintiff submitted no other grievances
regarding allegedly contaminated water at Wasco. 19 (Marquez Decl. ¶¶ 9, 14, Exs. 1, 2; Moseley
Decl. ¶¶ 8, 10.) 20 C. Plaintiff's Objections to Marquez Declaration⁴ 21 Plaintiff objects to the
declaration of F. Marquez, submitted in support of Defendant's 22 motion for summary judgment.
(ECF No. 43, pp. 10–13.) Plaintiff argues that the declaration is 23 not admissible because it
misstates the applicable regulations regarding the time constraints for 24 filing grievances, and
this statement of false language taints any other evidence included in the 25 declaration.
Accordingly, the false statements cannot be presented in an admissible form at trial. 26 (Id.) 27 4
Plaintiff states that he submits objections to both the Marquez and Moseley Declarations. (ECF
No. 43, p. 10.) However, as Plaintiff provides argument only with respect to the Marquez
Declaration, only the Marquez Declaration 28 is addressed here. (See id. at pp. 10–13.) 1
Defendant argues that the declaration is admissible, because the Marquez Declaration 2 correctly
stated the regulations that were in effect at the time Plaintiff filed his grievance, rather 3 than the
regulations Plaintiff is relying on, which took effect after the relevant time period. (ECF
4 No. 44, pp. 9–10.)

5 Plaintiff's objections to the Marquez Declaration are overruled. The Marquez Declaration 6
correctly relies upon the regulations in effect in November 2021, when Plaintiff submitted the 7
grievance at issue in this action. Those regulations provide that a grievance must be submitted 8
within 30 calendar days of discovery of an adverse policy, decision, action, condition, or 9
omission by the Department, and an appeal of an Office of Grievances decision must also be 10
submitted within 30 calendar days. Cal. Code Regs. tit. 15, §§ 3482(b), 3485(b) (eff. June 1, 11
2020). In challenging the Marquez Declaration, Plaintiff incorrectly cites to emergency 12
regulations that did not take effect until January 2022, which provide 60-day timelines for 13

submission of grievances and appeals on which Plaintiff relies. Cal. Code Regs. tit. 15 §§ 3480–14 3487 (eff. 2022). Accordingly, the Marquez Declaration is admissible for the purposes of the 15 motion for summary judgment. 16 D. Parties’ Positions 17 Defendant contends that the undisputed facts show that Plaintiff’s deliberate indifference 18 to conditions of confinement claim was not properly exhausted before filing suit, as required by 19 the PLRA. Plaintiff’s one grievance relevant to the alleged water contamination issue was 20 rejected as untimely, Plaintiff did not submit any grievances specifically against Defendant before 21 filing this suit, and Plaintiff did not name Defendant in his relevant grievance. Plaintiff is also not 22 excused from the exhaustion requirement. (Doc. 40-1.) Defendant requests that if the Court finds 23 any genuine disputes of material fact regarding exhaustion, the Court set a “preliminary 24 proceeding” to resolve any such disputes before the parties proceed to the merits of this case. (Id. 25 at pp. 12–13.) 26 In opposition, Plaintiff argues that Defendant has failed to establish that there are no 27 genuine disputes as to any relevant facts and that he is entitled to judgment as a matter of law. 28 Plaintiff agrees that he filed a grievance regarding the contaminated water issue at Wasco on 1 November 3, 2021, the date he discovered the adverse policy, decision, action, condition, or 2 omission, and the reviewing authority stated that he should have waited 30 days to file his 3 grievance, or before December 3, 2021, without stating what regulation provided the 30-day 4 timeline. Plaintiff argues that Title 15, § 3482 provides for submitting a claim within 60 calendar 5 days of discovery of an adverse policy, decision, condition, or omission, and according to that 6 section, the reviewing authority falsely rejected Plaintiff’s claim. Further, the reviewing 7 authority’s claim that Plaintiff knew of quarterly posted notices is also false, as the May 6, 2021 8 notice was not posted in the building where Plaintiff was housed on May 6, 2021, but was posted 9 on November 3, 2021, where he discovered it and filed a grievance on the same date. While 10 Plaintiff drank the contaminated water since 2018, the first time Plaintiff saw a posted notice 11 regarding the contaminated water was on November 3, 2021. Plaintiff also admits that he did not 12 name Defendant or his position or title in the filed grievance, but Plaintiff did not know 13 Defendant’s name, position, or title. Even though Defendant is listed on the posted notices 14 regarding the contaminated water, the information mentions him as a contact person only, and 15 Plaintiff only found out at a later time who the Defendant was and what role he played regarding 16 the Plant Operations at Wasco. Plaintiff admits that his available administrative remedies were 17 not properly exhausted before filing the operative complaint, but explains that he was hindered by 18 fear of the posted notice, haste, and ignorance of the law. In addition, Plaintiff argues that the 19 Regional Appeals Office’s failure to give a response to Plaintiff’s appeal of the rejected grievance 20 exhausted his administrative remedies, and that Defendant’s exhaustion claims are the same as 21 those stated in *Keller v. Alison*, Case No. 1:21-cv-01707-EPG-JLT, which was voluntarily 22 dismissed without prejudice to Plaintiff re-filing, thus dismissing the exhaustion issue. Plaintiff 23 further argues that even if the facts asserted by Defendant were properly shown by the motion 24 papers and undisputed, his claims for summary judgment are based on an

administrative 25 grievance being filed too early, and an operative complaint being filed prematurely, not on any of 26 the merit-based facts and claims within the complaint. Even if Defendant calculated the time 27 periods correctly regarding exhaustion, Defendant is equitably estopped to plead the exhaustion 28 defense due to the prior action of Keller v. Allison and because the present and previous cases 1 involve serious injuries that have partially disabled Plaintiff and left Plaintiff with permanent 2 medical problems. Plaintiff argues the administrative remedies were not available because his 3 grievance was rejected through biased review to avoid accountability and liability for the prison's 4 water being infected. If the Court recommends that Defendant's motion for summary judgment 5 be granted, Plaintiff requests that the case be dismissed, without prejudice to refiling the operative 6 complaint against Defendant, now that it appears the administrative remedies were exhausted. 7 (Doc. 43.) 8 In reply, Defendant contends that Plaintiff was aware of the water contamination issue at 9 Wasco before November 3, 2021, because the notices were first posted on June 6, 2018 and then 10 on a quarterly basis. Plaintiff had constructive notice of the May 6, 2021 notice because it was 11 posted above the water fountain of building A-1, on A yard, at Wasco. Plaintiff admits that 12 Wasco's water contamination issue goes as far back as early 2018, that the memos/notices 13 regarding the water contamination were continuously circulated on a quarterly basis, and Plaintiff 14 had been exposed to contaminated water since 2018 and was harmed in 2019, all admissions 15 contrary to Plaintiff's argument that he became aware of the water contamination issue at Wasco 16 on November 3, 2021, when the May 6, 2021 notice was posted. Plaintiff did not put the 17 institution on notice regarding his claims against Defendant because he did not refer to Defendant 18 or the misconduct now alleged in the complaint in his November 3, 2021 grievance or November 19 10, 2021 appeal. Plaintiff admits that he did not properly exhaust his administrative remedies, 20 and Plaintiff's haste and ignorance of the law does not exempt Plaintiff from complying with the 21 law. Plaintiff's voluntary dismissal of Keller v. Allison is immaterial to the case at bar, and the 22 doctrine of equitable estoppel does not prevent Defendant from raising the exhaustion defense. 23 The exhaustion process remained available to Plaintiff, and Plaintiff's grievance was properly 24 rejected as untimely. The Office of Appeals' "Time Expired" response did not exhaust Plaintiff's 25 administrative remedies, but instead confirmed proper rejection of Plaintiff's grievance as 26 untimely. Finally, Plaintiff admits that he did not properly exhaust the available administrative 27 remedies before filing his operative complaint, and Plaintiff may not exhaust after the filing of the 28 operative complaint. 1 F. Analysis 2 1. Grievance Log No. 184116 3 The parties agree that grievance 184116 is the only grievance potentially relevant to the 4 allegations in Plaintiff's complaint. UMF 17. The Court finds that grievance 184116 did not 5 exhaust Plaintiff's administrative remedies with respect to his claim against Defendant in this 6 action. 7 a. Timeliness 8 As an initial matter, the parties also agree that grievance 184116 was rejected by Wasco's 9 Office of Grievances as untimely. UMF 17, 18. However, Plaintiff disputes that his grievance 10 was properly rejected as untimely. (ECF No. 43 at pp. 2-4.) 11 Improper

screening of an inmate's administrative grievance can be sufficient to render 12 administrative remedies effectively unavailable such that exhaustion is not required under the 13 PLRA. *Sapp v. Kimbrell*, 623 F.3d 813, 832 (9th Cir. 2010). To fall within this exception, 14 Plaintiff must establish that a grievance would have sufficed to exhaust his claims in this suit and 15 that the grievance was screened out for reasons inconsistent with or unsupported by applicable 16 regulations. *Id.* at 823–24. 17 In grievance 184116, which was dated November 3, 2021, Plaintiff attached a May 6, 18 2021 notice listing Defendant's name that the water used by inmates at Wasco was contaminated. 19 UMF 17. Wasco's Office of Grievances rejected the grievance (UMF 17), stating: 20 You did not submit the claim within the timeframe required by California Code of Regulations, title 15. The date you discovered the adverse policy decision, action, 21 condition, or omission by the Department was 11/03/2021; the date you submitted this claim was 11/03/2021. You should have submitted your claim on or by 22 12/03/2021 to meet the 30 calendar day requirement set forth in the regulations. 23 The attached document is dated 5/6/21, your grievance is dated 11/3/21. Additionally, you clearly note you have been drinking the institutions [sic] water 24 since 2018, making you aware that the notices are provided quarterly. 25 (Marquez Decl. ¶ 13, Ex. 3.) 26 Defendant argues that grievance 184116 was properly rejected as untimely because 27 Plaintiff failed to submit the grievance within thirty days from the date he received the May 6, 28 2021 notice regarding the water contamination issue, and because Plaintiff claimed in his appeal 1 of the Office of Grievances' rejection that he was exposed to contaminated water as far back as 2 early 2018, but did not submit his relevant grievance until November 3, 2021. (ECF No. 40-1 at 3 pp. 9-10.) Defendant also asserts that Plaintiff was aware of the water contamination issue at 4 Wasco prior to November 3, 2021, because Plaintiff "admits" that memos/notices regarding water 5 contamination were circulated quarterly and that he had been drinking the water since 2018. 6 (ECF No. 44 at pp. 2-3). 7 Defendant's argument is not supported by the record. Rather, Plaintiff admits only that 8 the notices were supposedly posted quarterly, not that he had seen them previously. UMF 3 9 ("which are supposed to be posted every quarter of the year"). And, while Plaintiff states that he 10 has been drinking contaminated water since 2018, this statement cannot be read as an admission 11 that he knew of the contamination since that time. (See ECF No. 1 at 8-9, UMF 18.) 12 In contrast, Plaintiff argues that the Office of Grievances' claim that he knew of the 13 quarterly posted notices is false. (Doc. 43 at p. 3.) Plaintiff contends for the first time in his 14 opposition brief, which is signed under penalty of perjury, that he did not discover the issue until

15 November 3, 2021, when he first saw the posted notice regarding contaminated water dated May

16 6, 2021, and that he did not see any older notices until doing research in the prison's law library. 17 (ECF No. 43 at 3-4.) Plaintiff also contends that the May 6, 2021 notice was not posted until

18 November 3, 2021, where he discovered it and then filed his grievance. (*Id.* at p. 3.) Plaintiff's

19 assertions made for the first time in his opposition brief are not otherwise supported by evidence 20 in the record. See *Rivera v. AMTRAK*, 331 F.3d 1074, 1078 (9th Cir. 2003) (“Conclusory 21 allegations unsupported by factual data cannot defeat summary judgment.”); *F.T.C. v. Publ’g 22 Clearing House, Inc.*, 104 F.3d 1168, 1171 (9th Cir. 1997), as amended (Apr. 11, 1997) (“A 23 conclusory, self-serving affidavit, lacking detailed facts and any supporting evidence, is 24 insufficient to create a genuine issue of material fact.”). The grievance itself does not state when 25 Plaintiff received the attached May 6, 2021 notice, (ECF No. 40-5, Ex. 3 to Marquez Decl.), nor 26 does Plaintiff argue in his appeal the date when he first discovered the issue of contaminated 27 water at the institution, (ECF No. 40-4, Ex. 4 to Moseley Decl.). 28 Understandably, Plaintiff may have been confused about the Office of Grievances’ 1 response, as it initially appears to suggest that Plaintiff filed his grievance prematurely but then 2 subsequently explains that the grievance was untimely, stating: “The attached document is dated 3 5/6/21, your grievance is dated 11/3/21. Additionally, you clearly note you have been drinking 4 the institutions [sic] water since 2018, making you aware that the notices are provided quarterly.” 5 (ECF No. 40-4, Ex. 4 to Moseley Decl.) Regardless of any ambiguity in the response, when 6 Plaintiff was provided with an opportunity to clarify the date in his appeal, he made no attempt to 7 specify the date that he became aware of the water contamination. He did not clarify (or 8 otherwise allege) that he failed to receive the 5/6/21 notice (or any other information regarding 9 water contamination at Wasco) until November 3, 2021. Indeed, in his appeal, Plaintiff did not 10 identify any particular date that he became aware of the water contamination issue. (Id.) Plaintiff 11 has not provided evidence that his discovery of the water contamination occurred fewer than 30 12 calendar days before he submitted grievance 184116. Plaintiff’s conclusory, self-serving 13 statements in his opposition brief alone cannot create a genuine issue of material fact. *Rivera*, 14 331 F.3d at 1078. 15 Nonetheless, even assuming Plaintiff’s grievance was improperly rejected as untimely, the 16 grievance did not adequately or sufficiently place the institution on notice of the nature of 17 Plaintiff’s claims or that they were brought against Defendant. The grievance concerned 18 contamination of the water at Wasco, but it fails to mention any affirmative misconduct by 19 Defendant that would put the prison on notice of the nature of his claims in this action. UMF 3, 20 17-18. 21 b. Notice of Nature of Plaintiff’s Claims Against Defendant 22 Under the regulations in effect at the time, Plaintiff was required to describe all 23 information known and available to him regarding the claim, “including key dates and times, 24 names and titles of all involved staff members (or descriptions of those staff members), and 25 names and titles of all witnesses to the best of the claimant’s knowledge.” UMF 11; Cal. Code 26 Regs. tit. 15 § 3482(c)(2) (eff. June 1, 2020). 27 Plaintiff admits that he did not state Defendant’s name, position, or title in the filed 28 grievance, even though Defendant’s name is on all posted notices regarding the contaminated 1 water as a contact person. (ECF No. 43 at 4); UMF 17-18. Plaintiff claims, however, that he did 2 not know Defendant’s name, position, title, or role in plant operations at Wasco, and that § 3 3482(c)(2) requires only that “to submit a grievance, a claimant

(shall) describe all information 4 known and available to the claimant regarding the claim.” (ECF No. 43 at p. 4) (emphasis in 5 original). 6 Plaintiff is correct that under the relevant regulations he was not required to specifically 7 include the name and title of the staff member involved in the issue(s) raised in the grievance. 8 See UMF 11. However, even if Plaintiff did not know Defendant’s role at the time he filed his 9 grievance, he was still required to provide all information known and available to him regarding 10 the claim. Plaintiff apparently knew Defendant’s name at the time he filed his grievance, but did 11 not include it. (ECF No. 43 at p. 4); see also UMF 17-18. 12 Moreover, even accepting as true Plaintiff’s assertion that he only later learned 13 Defendant’s role in plant operations at Wasco, there is no allegation in the grievance that the 14 water quality issue was the result of affirmative misconduct on the part of any person at Wasco, 15 much less Defendant, sufficient to put the prison on notice of the nature of his claims. For 16 remedies to be fully exhausted, a grievance must “alert the prison to a problem and facilitate its 17 resolution.” Griffin v. Arpaio, 557 F.3d 1117, 1120 (9th Cir. 2009) (concluding that a prisoner’s 18 grievance cannot serve to exhaust administrative remedies where it fails to “‘alert[] the prison to 19 the nature of the wrong for which redress is sought’”). 20 In relevant part, the grievance states: 21 Pursuant to important information, regarding this institutions drinking water, the water has recently failed the drinking water standards (DWS). On the date of 22 December 14th, 2017, a regulation change enacted a new Maximum Contaminant Level (MCL), for 1, 2, 3,-TCP. According to recent monthly tests, they have shown 23 that the level of 1, 2, 3-TCP is above the standard of 0.005 ug/L. Water sample results, received in the Second Quarter of 2021, showed that the 1, 2, 3- 24 Trichloropropane levels ranged from 0.008 to 0.019 ug/L, from the sources of Well #1, and Well #2. The average level of 1, 2, 3-TCP, over the last year, ranged from 25 0.008 to 0.022 ug/L, which is above the standard of (MCL), for 1, 2, 3-TCP. This is an immediate risk to me, because i’ve been drinking this institution’s water since 26 2018, and, according to recent information, drinking water containing 1, 2, 3-TCP, in access of the (MCL) over many years, can have an increased risk of me 27 contracting cancer. I am at a higher risk, even, because I have the underlining illnesses of H-Pylori, Irritable Bowel Syndrome, and Gastroesophageal Reflux 28 Disease. Also, while incarcerated at this institution, I contracted COVID-19. I’ve 1 never had these illnesses before, nor do I have a history of them, so how did I contract them? . . . Pursuant to the attached documents, I must avoid water that’s 2 not clean. Some of the treatments, for my illnesses, is to drink more water, to stay hydrated. By me being forced to drink contaminated water, my symptoms worsen. 3 How am I to follow my treatment plans, if i’m forced to drink dirty water? 4 (ECF No. 40-5, Ex. 3 to Marquez Decl.) In the action requested section of the grievance, Plaintiff 5 states, “I am requesting that accommodations be made in my behalf. Some type of compromise. 6 Thank you. Also, I require that this institution take re-sponsibility, and accountability for these 7 issues.” (Id.) 8 Plaintiff’s grievance complains that water at Wasco was contaminated and made him sick 9 and he seeks a compromise to drinking contaminated water. The grievance does not mention 10 Defendant DeGough, a plant

manager, or any other individual, nor does it mention that anyone 11 relayed false information to the institution staff regarding the risks and dangers of the 1, 2, 3-TCP 12 contaminant. The grievance also does not mention that any individual (1) failed to properly 13 monitor the increase of 1, 2, 3-TCP and correctly inform the institution's administration, (2) 14 failed to circumvent the egregious failure(s) of past contractors, regulations, and plans that 15 showed to be extreme risk(s) to human lives, (3) failed in his/her authority of the water quality, 16 and the water operations of the institution, to make sure that the quality of water is safe, and 17 operations of the water ran properly and correctly, (4) failed in his/her duties as the contractor and 18 supervising plant manager, (5) failed to properly inform supervisory personnel of the institution 19 about potential remedies and techniques, or (6) was exhibiting incompetence that is beyond one 20 seated in position. The grievance fails to mention misconduct by any individual that would put 21 the prison on notice of the nature of his claims in this action. See UMF 3. Critically, Plaintiff 22 admits in his opposition that his available administrative remedies were not exhausted. (ECF No. 23 43 at p. 5.) 24 2. Keller v. Allison, Case No. 1:21-cv-01707-JLT-EPG 25 In challenging the motion for summary judgment, Plaintiff asserts that because Defendant 26 filed an exhaustion-based motion for summary judgment in Keller v. Allison, Case No. 1:21-cv- 27 5 A court may properly take judicial notice of court records in other cases. Fed. R. Evid. 201; See United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980) (court may take judicial notice of its own records and 28 the records in other cases). 1 01707-JLT-EPG, and that action was voluntarily dismissed without prejudice, Defendant cannot 2 now raise the exhaustion issue in the instant action. (ECF No. 43 at p. 5-6.) Specifically, 3 Plaintiff contends that Defendant is "equitably estopped to plead exhaustion defense, due to the 4 initial summary judgement regarding exhaustion was part of the initial case . . . which was 5 voluntarily dismissed without prejudice." (Id. at 6.) 6 To the extent Plaintiff is arguing that equitable estoppel precludes Defendant from 7 asserting an exhaustion defense, this argument is not persuasive. "Equitable estoppel . . . focuses 8 primarily on actions taken by the defendant to prevent a plaintiff from filing suit, sometimes 9 referred to as 'fraudulent concealment.'" Lukovsky v. City & Cnty. of San Francisco, 535 F.3d 10 1044, 1051 (9th Cir. 2008) (citation omitted); Howard v. Williamson, No. 2:16-cv-1200 TLN 11 KJN P, 2017 WL 5177721, at *8 n.7 (E.D. Cal. Nov. 7, 2017) (citation omitted). To establish 12 equitable estoppel, the plaintiff "must point to some fraudulent concealment, some active conduct 13 by the defendant above and beyond the wrongdoing upon which the plaintiff's claim is filed." Id. 14 According to the record in Keller v. Allison, Case No. 1:21-cv-01707-JLT-EPG, the 15 dismissal of that action was initiated by Plaintiff, not Defendant, and was without prejudice to re- 16 filing. (Id. at ECF No. 57 (Notice of Voluntary Dismissal); ECF No. 61.) The defendants merely 17 stipulated to the dismissal without prejudice, both sides to bear their own costs and fees. (Id. at 18 ECF No. 60.) There is no indication that Defendant undertook any action in the prior case to 19 prevent Plaintiff from filing this suit. Plaintiff has identified no reason, besides existence of the 20 prior action, that Defendant should be prevented from raising the failure to exhaust administrative

21 remedies. Although a motion for summary judgment for exhaustion was filed in the prior action, 22 that motion was never fully briefed before the voluntary dismissal and therefore never decided on 23 its merits. (Id. at ECF Nos. 39, 55, 57, 61.) 24 Plaintiff additionally argues that Defendant's motion for summary judgment should be 25 denied because it is based on the operative complaint being filed before the exhaustion of 26 administrative remedies and not "on any of the merit-based facts and claims within the civil 27 complaint." (ECF No. 43 at 6.) This argument is unavailing. The Ninth Circuit has recognized 28 that "[e]xhaustion should be decided, if feasible, before reaching the merits of a prisoner's 1 claims," and "discovery directed to the merits of the suit" should be left until later. Albino, 747 2 F.3d at 1170. Further, the Discovery and Scheduling Order in this action expressly contemplates 3 that a motion for summary judgment for failure to exhaust administrative remedies be filed prior 4 to completion of merits discovery or the filing of other dispositive motions. (See ECF No. 31.) 5 3. Availability of Grievance Process 6 Plaintiff argues that the administrative remedies were not available to him due to his 7 grievance being rejected through biased review. (ECF No. 43 at 7.) Plaintiff also contends that 8 Defendant is not entitled to summary judgment based on an administrative grievance being filed 9 too "early." (Id. at 6.) 10 Defendant does not acknowledge Plaintiff's argument that the language in the Office of 11 Grievances' rejection appears to state that Plaintiff filed his grievance too early. As discussed 12 above, it would be reasonable for Plaintiff to be confused about the Wasco Office of Grievances' 13 explanation for the rejection of his grievance as untimely. However, any ambiguity in the 14 language of the rejection or any resulting confusion does not change the fact that Plaintiff did not 15 clearly state at any point (until his opposition to the motion for summary judgment) that he did 16 not discover the water contamination issue until November 3, 2021, or the fact that Plaintiff's 17 grievance did not put the prison on notice of the nature of his claims against Defendant. As to 18 this latter point, it is undisputed that Plaintiff was able to utilize the administrative grievance 19 process by filing grievance 184116 and, after receiving Wasco's Office of Grievances' response, 20 by submitting an appeal. UMF 17, 18. Even if grievance 184116 had been accepted as timely 21 and/or the appeal processed through the final level review, it did not have enough information to 22 place the institution on notice of the nature of Plaintiff's claims or that those claims were brought 23 against Defendant. 24 Plaintiff also admits that he failed to exhaust his administrative remedies, but attributes 25 that failure to his haste and ignorance of the law. (ECF No.43 at 5.) Plaintiff's asserted haste in 26 filing the grievance or unfamiliarity with the law does not excuse his failure to exhaust or 27 otherwise render his administrative remedies unavailable. "A prisoner's concession to 28 nonexhaustion is a valid ground for dismissal, so long as no exception to exhaustion applies." 1 Wyatt v. Terhune, 315 F.3d 1108, 1120 (2003), overruled on other grounds by Albino, 747 F.3d 2 1162; see also Johnson v. California Corr. Health Servs., No. 2:25-cv-1423 DC CSK P, 2025 3 WL 2623835, at *3 (E.D. Cal. Sept. 11, 2025). "A prisoner-plaintiff's personal lack of 4 knowledge of the law is insufficient to excuse a failure to exhaust." Ford v. Gates, No. CV 21- 5 0088 DMG (PVC), 2021 WL

6102926, *5 (C.D. Cal. Mar. 1, 2021) (internal quotation and 6 citation omitted). 7 IV. Conclusion
and Order 8 Based on the foregoing, the Court finds that Plaintiff failed to exhaust his
administrative 9 remedies as his claim for deliberate indifference to conditions of confinement in
violation of the 10 Eighth Amendment against Defendant DeGough. Accordingly, IT IS HEREBY
ORDERED as 11 follows: 12 1. Defendant DeGough's motion for summary judgment for failure
to exhaust available 13 administrative remedies, (ECF No.40), is GRANTED; 14 2. This action is
dismissed, without prejudice, for failure to exhaust administrative remedies; 15 and 16 3. The
Clerk of the Court is directed to terminate all pending motions and to close this case. 17 IT IS SO
ORDERED. 18 19 Dated: September 30, 2025 /s/ Barbara A. McAuliffe _

UNITED STATES MAGISTRATE JUDGE

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