

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

Ford v. Fiori

Ford v. Fiori · No. 1:23-cv-01602-KES-SAB (PC) · Decided June 27, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 MARCEL D. FORD, No. 1:23-cv-01602-KES-SAB (PC) 12 Plaintiff,
FINDINGS AND RECOMMENDATIONS RECOMMENDING DEFENDANT’S 13 v.
EXHAUSTION MOTION FOR SUMMARY JUDGMENT BE GRANTED 14 FIORI, (ECF No.
39) 15 Defendant. 16 17 Plaintiff is proceeding pro se and in forma pauperis in this action filed
pursuant to 42 18 U.S.C. § 1983.

19 Currently before the Court is Defendant Fiori’s exhaustion motion for summary judgment, 20
filed April 16, 2025. 21 I. 22 RELEVANT BACKGROUND 23 This action is proceeding on
Plaintiff’s first amended complaint against Defendant Fiori for 24 deliberate indifference. (ECF
No. 22.) 25 Defendant filed an answer to the operative complaint on November 8, 2024.

(ECF No. 29.) 26 The discovery and scheduling order was issued on December 13, 2024. (ECF
No. 35.) 27 28 1 On April 16, 2025, Defendant filed the instant exhaustion motion for summary
judgment.1 2 (ECF No. 39.) Plaintiff did not file an opposition and the time to do so has passed.2
Local Rule 3 230(l).

Accordingly, Defendant’s motion is deemed submitted for review. Id. 4 II. 5 LEGAL STANDARD
6 A. Statutory Exhaustion Requirement 7 The Prison Litigation Reform Act (PLRA) of 1995,
requires that prisoners exhaust “such 8 administrative remedies as are available” before
commencing a suit challenging prison 9 conditions.” 42 U.S.C. § 1997e(a); see also *Ross v. Blake*,
578 U.S. 632, 638 (2016) (“An 10 inmate, that is, must exhaust available remedies, but need not
exhaust unavailable ones.”).

11 Exhaustion is mandatory unless unavailable. “The obligation to exhaust ‘available’ remedies 12
persists as long as some remedy remains ‘available.’ Once that is no longer the case, then there 13
are no ‘remedies ... available,’ and the prisoner need not further pursue the grievance.” *Brown v.*
14 *Valoff*, 422 F.3d 926, 935 (9th Cir. 2005) (emphasis in original) (citing *Booth v. Churner*, 532
15 U.S. 731, 739 (2001)).

16 This statutory exhaustion requirement applies to all inmate suits about prison life, *Porter v.*
Nussle, 534 U.S. 516, 532 (2002) (quotation marks omitted), regardless of the relief sought by 18
the prisoner or the relief offered by the process, *Booth v. Churner*, 532 U.S. at 741, and 19

unexhausted claims may not be brought to court, *Jones v. Bock*, 549 U.S. 199, 211 (2007) (citing 20 Porter, 534 U.S. at 524).

21 The failure to exhaust is an affirmative defense, and the defendants bear the burden of 22 raising and proving the absence of exhaustion. *Jones*, 549 U.S. at 216; *Albino v. Baca*, 747 F.3d 23 1162, 1166 (9th Cir. 2014). “In the rare event that a failure to exhaust is clear from the face of 24 1 Concurrently with the motion for summary judgment, Defendant served Plaintiff with the requisite notice of the 25 requirements for opposing the motion.

Woods v. Carey, 684 F.3d 934, 939-41 (9th Cir. 2012); *Rand v. Rowland*, 154 F.3d 952, 960-61 (9th Cir. 1998). 26 27 2 The Court notes that on June 18, 2025, Plaintiff’s address of record was updated pursuant to a notice filed in *Ford v. State of California, et al.*, No. 1:23-cv-01531-GSA (PC). (ECF No. 42.)_ However, Plaintiff had previously been 28 properly served with Defendant’s motion for summary judgment on April 16, 2025.

(ECF No. 39.) 1 the complaint, a defendant may move for dismissal under Rule 12(b)(6).” *Albino*, 747 F.3d at 2 1166. Otherwise, the defendants must produce evidence proving the failure to exhaust, and they 3 are entitled to summary judgment under Rule 56 only if the undisputed evidence, viewed in the 4 light most favorable to the plaintiff, shows he failed to exhaust.

Id. 5 B. Summary Judgment Standard 6 Any party may move for summary judgment, and the Court shall grant summary judgment 7 if the movant shows that there is no genuine dispute as to any material fact and the movant is 8 entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a) (quotation marks omitted); *Albino*, 9 747 F.3d at 1166; *Washington Mut. Inc. v. U.S.*, 636 F.3d 1207, 1216 (9th Cir.

2011). Each 10 party’s position, whether it be that a fact is disputed or undisputed, must be supported by (1) 11 citing to particular parts of materials in the record, including but not limited to depositions, 12 documents, declarations, or discovery; or (2) showing that the materials cited do not establish the 13 presence or absence of a genuine dispute or that the opposing party cannot produce admissible 14 evidence to support the fact.

Fed. R. Civ. P. 56(c)(1) (quotation marks omitted). The Court may 15 consider other materials in the record not cited to by the parties, although it is not required to do 16 so. Fed. R. Civ. P. 56(c) (3); *Carmen v. San Francisco Unified Sch. Dist.*, 237 F.3d 1026, 1031 17 (9th Cir. 2001); accord *Simmons v. Navajo Cnty., Ariz.*, 609 F.3d 1011, 1017 (9th Cir. 2010).

18 The defendants bear the burden of proof in moving for summary judgment for failure to 19 exhaust, *Albino*, 747 F.3d at 1166, and they must “prove that there was an available 20 administrative remedy, and that the prisoner did not exhaust that available remedy,” *id.* at 1172. 21 If the defendants carry their burden, the burden of production shifts to the plaintiff “to come 22 forward with evidence showing that there is something in his particular case that made the 23

existing and generally available administrative remedies effectively unavailable to him.” Id. “If 24 the undisputed evidence viewed in the light most favorable to the prisoner shows a failure to 25 exhaust, a defendant is entitled to summary judgment under Rule 56.” Id. at 1166.

However, 26 “[i]f material facts are disputed, summary judgment should be denied, and the district judge rather 27 than a jury should determine the facts.” Id. 28 /// 1 In arriving at this Findings and Recommendation, the Court carefully reviewed and 2 considered all arguments, points and authorities, declarations, exhibits, statements of undisputed 3 facts and responses thereto, if any, objections, and other papers filed by the parties.

Omission of 4 reference to an argument, document, paper, or objection is not to be construed to the effect that 5 this court did not consider the argument, document, paper, or objection. This Court thoroughly 6 reviewed and considered the evidence it deemed admissible, material, and appropriate. 7 III. 8 DISCUSSION 9 A. Description of CDCR’s Administrative Remedy Process 10 CDCR provides an administrative grievance process for prisoners in accordance with Title 11 15 of the California Code of Regulations.

(UF 4.) This process was available to Plaintiff at all 12 times between May 17, 2023, (the date Plaintiff arrived to KVSP) and November 14, 2023, (the 13 date Plaintiff filed his original complaint). (UF 5.) 14 As of June 1, 2020, a prisoner is required to follow procedures set forth in California Code 15 of Regulations, Title 15, sections 3480-3487 when submitting a grievance.

(UF 4.) The 16 administrative grievance process has two levels of review—a review at the institutional level with 17 the Office of Grievances (OOG) and a review at the Office of Appeals (OOA) in Sacramento. 18 (Id.) This process requires the prisoner to submit a Form 602-1 to the OOG at the institution 19 where the prisoner is housed within 60 days of the date the prisoner knew or should have known 20 of the adverse policy, decision, action, condition, or omission.

(UF 5); Cal. Code Regs., tit. 15, §§ 21 3482(a)(1), (b)(1).) A prisoner’s grievance must describe all information known and available 22 regarding the claim, including key dates and times, names and titles of all involved staff (or 23 descriptions of those staff members), and names and titles of all witnesses to the best of the 24 claimant’s knowledge. (UF 6); Cal. Code Regs., tit.

15 § 3482(c)(1). If the prisoner is unsatisfied 25 with the institutional OOG decision, he may submit an appeal (CDCR Form 602-2) to the OOA 26 within 60 days of discovering the decision by the OOG. (UF 7); Cal. Code Regs., tit. 15 § 27 3484(b)(1). A final decision by the OOA is required to exhaust a grievance. (Id.) 28 /// 1 B. Allegations of Complaint 2 Plaintiff arrived at Kern Valley State Prison (KVSP) on or about May 17 or May 18, 3 2023, and had to lock it up and away from other inmates due to a “R” suffix on his record as well 4 as a couple of old toxic relationships.

Plaintiff told officer Fiori many times that he was in need of clothes and linens and he could not leave the unit due to safety concerns. However, officer Fiori did not assist Plaintiff and said he must go to yard and get the laundry himself. Plaintiff did not leave his cell at all unless he was under the safety and security of escorting staff. Plaintiff did not shower or go to medical, dayroom or yard for any reason.

Plaintiff “froze” from the cold weather as well as from the cold that entered the cell through the vents and air conditioner unit. Plaintiff did not receive laundry from May 18, 2023 to June 7, 2023, and then from June 7, 2023 to July 5, 2023. Officer Fiori was a regular in the building and was completely aware of Plaintiff’s dangerous situation but would not assist him.

KVSP conducted an investigation into Plaintiff’s safety concerns and through documentation substantiated his claim. C. Statement of Undisputed Facts 1. At all times relevant to the allegations in the FAC, Plaintiff Marcel D. Ford was incarcerated at Kern Valley State Prison (KVSP). (ECF No. 12.) 2. Defendant Officer Fiori was employed as a Correctional Officer at KVSP at the time of the alleged events and worked in the D-Unit as a floor officer.

(ECF No. 29 at 2:8-10.) 3. CDCR has an administrative grievance process that is available to all inmates at KVSP. This process was available to all inmates in 2023, when the alleged events in this case occurred, and is currently available to all inmates. (ECF No. 12 at 2; Moseley Decl. ¶ 6; Garcia Decl. ¶ 3.) 4.

As of June 1, 2020, an inmate is required to follow procedures set forth in California Code of Regulations, Title 15, sections 3480-3487 when submitting a grievance. The administrative grievance process has two levels of review—a review at the institutional level with the Office of Grievances (OOG) and a review at the Office of Appeals (OOA) in Sacramento.

3 Hereinafter referred to “UF.” 1 (Garcia Decl. ¶ 4; Moseley Decl. ¶ 6.) 2 5. This process requires the inmate to submit a Form 602-1 to the OOG at the prison where the inmate is housed within 60 days of the date the prisoner knew or should have known of the adverse policy, decision, action, condition, or omission. (Garcia Decl. ¶ 4; Cal. Code Regs., 5 tit.

15, §§ 3482(a)(1), (b)(1) (2024).) 6 6. An inmate’s grievance must specify each claim and the relief requested, and name all involved staff members and describe their alleged conduct. (Garcia Decl. ¶ 4; Cal. Code Regs., tit. 15 § 3482(c)(2) (2024).) 9 7. If the inmate is unsatisfied with the institutional OOG decision, they may submit an appeal (CDCR Form 602-2) to the OOA within 60 days of discovering the decision by the OOG.

A final decision by the OOA is required to exhaust an inmate grievance. (Garcia Decl. ¶ 4; 12 Moseley Decl. ¶¶ 4-5; Cal. Code Regs., tit. 15 § 3484(b)(1) (2024).) 13 8. Between May 17, 2023 (the date of the alleged events), through November 14, 2023 (the date Plaintiff filed this

lawsuit), the Office of Grievances received two grievances that 15 were relevant to the allegations in Plaintiff's complaint, but did not mention Officer Fiori: 16 Grievance Log Nos. 416333 and 459162.

(Garcia Decl. ¶¶ 7-10.) 17 9. In Grievance Log No. 416333, received by the OOG on June 27, 2023, Plaintiff 18 alleged that he had not received a towel, pillowcase, and extra blanket or sheet since he arrived to 19 KVSP on May 18, 2023. Plaintiff complained that he attempted to get the proper state clothing 20 twice, but "the officer in C-2" told him not to worry about it.

Plaintiff further complained that he 21 told this officer that he was so cold in his cell. There was no mention of Officer Fiori. (Garcia 22 Decl. ¶ 9, Ex. B.) 23 10. Plaintiff appealed the decision to the OOA. In Appeal Log No. 416333 (an appeal 24 of Grievance Log No. 416333), Plaintiff alleged that upon arrival at KVSP, Plaintiff only 25 received one blanket, one sheet, and other bedding on July 5, 2023, due to improper conduct in 26 the laundry unit on Facility C. Plaintiff made no reference to Defendant Fiori in this appeal.

The 27 OOA granted this appeal on October 1, 2023. In the Appeal Log No. 416333 decision, the OOA 28 granted the appeal and instructed the KVSP OOG to open a new grievance log number because 1 the OOG did not provide supporting documentation to substantiate that Plaintiff received the 2 clothing and linens on July 5, 2023. (Moseley Decl. ¶ 9, Ex. 3.) 3 11. Grievance Log No. 459162, received by the OOG on October 4, 2023, was opened 4 by the OOG at the request of the OOA's response to Appeal Log No. 416333.

In the Grievance 5 Log No. 459162 OOG decision, the OOG referred to "Grievance Log# 460149." This was a 6 clerical error. Grievance Log No. 460149 belongs to another inmate, not Plaintiff. The correct 7 grievance considered by the OOG in this decision was Grievance Log No. 416333. (Garcia Decl. 8 ¶ 10, Ex. C.) 9 12. Plaintiff appealed the Grievance Log No. 459162 decision.

In Appeal Log No. 10 459162, Plaintiff alleged that on November 5, 2023, Plaintiff asked an officer for compensation 11 for missing items while on C and D yards. Plaintiff also attached an inmate request for interview 12 form in which Plaintiff alleged that Plaintiff put the laundry unit and program office on Facility C 13 on notice regarding the issue. Plaintiff made no reference to Officer Fiori in this appeal.

Appeal 14 Log No. 459162 (an appeal of Grievance Log No. 459162) was denied on January 24, 2024. 15 (Moseley Decl. ¶ 10, Ex. 4.) 16 13. Other than Appeal Log Nos. 416333 and 459162, the OOA located no other 17 appeals submitted by Plaintiff regarding or related to the relevant allegations. (Moseley Decl. ¶ 18 11.) 19 14. Between May 17, 2023 (the date of the alleged events), through November 14, 20 2023 (the date Plaintiff filed this lawsuit), the Office of

Grievances received four grievances that 21 mention Officer Fiori, but do not mention the relevant allegations: Grievance Log Nos. 470241, 22 468345, 458793, and 405908.

(Garcia Decl. ¶¶ 11-15.) 23 15. In Grievance Log No. 470241, received by the OOG on October 26, 2023, Plaintiff 24 alleged that he had not received a tablet, charger, earbuds, or a quarterly package he ordered since 25 arriving to KVSP on May 17, 2023. Plaintiff also claimed that “[he was] not in ASU for any... 26 wrong doings so all [he sees] from here regarding the lawsuit against Officer Fiori on the D yard 27 here at KVSP (D6) 3rd watch the legal duty breach regarding the state of CA, or city of Delano 28 County of Kern [sic] [.]” However, there was no mention of the relevant allegations.

(Garcia 1 Decl. ¶ 12, Ex. D.) 2 16. In Grievance Log No. 468345, received on October 23, 2023, Plaintiff alleged that 3 Officer Fiori mishandled all of Plaintiff’s Office of Appeals responses on unspecified dates. 4 However, there was no mention of the relevant allegations. (Garcia Decl. ¶ 13, Ex. E.) 5 17.

In Grievance Log No. 458793, received on October 3, 2023, Plaintiff alleged that 6 he submitted a staff misconduct grievance regarding Officer Fiori, but “all due process steps were 7 overlooked and never taking the investigation was one sided and extremely bias [sic]” on an 8 unspecified date.

However, there was no mention of the relevant allegations. (Garcia Decl. ¶ 14, 9 Ex. F.) 10 18. In Grievance Log No. 405908, received on May 31, 2023, Plaintiff alleged that 11 Officer Fiori gave two of Plaintiff’s grievances to another inmate on an unspecified date, 12 violating his rights under the Eighth Amendment.

However, there was no mention of the relevant 13 allegations. (Garcia Decl. ¶ 15, Ex. G.) 14 19. Other than the grievances described, a review of the SOMS database indicates that 15 no other relevant grievances were received and/or submitted at KVSP by Plaintiff between May 16 17, 2023, and November 14, 2023. (Garcia Decl. ¶ 16.) 17 20.

The OOA located other appeals received by the OOA from Plaintiff during the 18 relevant time period, but they did not contain any of the relevant allegations: Log Nos. 402207, 19 403774, 403403, 421926, 433617, 435395, 436559, and 443084. (Moseley Decl. ¶ 12.) 20 D. Analysis of Defendant’s Motion 21 Defendant argues that Plaintiff submitted six relevant grievances, but each grievance 22 failed to identify Fiori or failed to provide sufficient information to notify the institution of 23 Plaintiff’s deliberate indifference claim.

24 As an initial matter, it is undisputed that CDCR has an administrative grievance process 25 that is available to all inmates at KVSP. This process was available to all inmates in 2023, when 26 the alleged events in this case occurred, and is currently available to all inmates. (UF 3; ECF No. 27 12 at 2.) 28 /// 1 Further, it is undisputed that Between May 17, 2023 (the date of the alleged

events), 2 through November 14, 2023 (the date Plaintiff filed this lawsuit), the Office of Grievances 3 received two grievances that were relevant to the allegations in Plaintiff's complaint, but did not 4 mention Officer Fiori: Grievance Log Nos. 416333 and 459162.4 (UF 8.)

5 Other than Appeal Log Nos. 416333 and 459162, the OOA located no other appeals 6 submitted by Plaintiff regarding or related to the relevant allegations. (UF 13.) 7 Between May 17, 2023 (the date of the alleged events), through November 14, 2023 (the 8 date Plaintiff filed this lawsuit), the Office of Grievances received four grievances that mention 9 Officer Fiori, but do not mention the relevant allegations: Grievance Log Nos. 470241, 468345, 10 458793, and 405908.

(UF 14.) 11 Other than the grievances described, a review of the SOMS database indicates that no 12 other relevant grievances were received and/or submitted at KVSP by Plaintiff between May 17, 13 2023, and November 14, 2023. (UF 19.)

The OOA located other appeals received by the OOA 14 from Plaintiff during the relevant time period, but they did not contain any of the relevant 15 allegations: Log Nos. 402207, 403774, 403403, 421926, 433617, 435395, 436559, and 443084. 16 (UF 20.) 17 1. Log Nos. 416333 and 459162 Failed to Mention Officer Fiori 18 In Grievance Log No. 416333, received by the OOG on June 27, 2023, Plaintiff alleged 19 that he had not received a towel, pillowcase, and extra blanket or sheet since he arrived to KVSP 20 on May 18, 2023.

Plaintiff complained that he attempted to get the proper state clothing twice, but 21 "the officer in C-2" told him not to worry about it. Plaintiff further complained that he told this 22 officer that he was so cold in his cell. There was no mention of Officer Fiori. (UF 9.) Plaintiff 23 appealed the decision to the OOA.

In Appeal Log No. 416333 (an appeal of Grievance Log No. 24 25 4 Although Plaintiff filed a first amended complaint on December 24, 2023 (with application of the mailbox rule), the SOMS history report for Plaintiff reflects that he filed a grievance while located at Pleasant Valley State Prison on 26 November 30, 2023.

However, Plaintiff did not file another grievance at KVSP until December 28, 2023. See *Saddozai v. Davis*, 35 F.4th 705, 708 (9th Cir. 2002) (exhaustion satisfied as long as prisoner completes process 27 before operative amended complaint is filed). Plaintiff has presented no evidence demonstrating that he continued to pursue his remedies and completed them before filing the first amended complaint.

28 1 416333), Plaintiff alleged that upon arrival at KVSP, Plaintiff only received one blanket, one 2 sheet, and other bedding on July 5, 2023, due to improper conduct in the laundry unit on Facility 3 C. Plaintiff made no reference to Defendant Fiori in this appeal.

The OOA granted this appeal on 4 October 1, 2023. In the Appeal Log No. 416333 decision, the OOA granted the appeal and 5 instructed the KVSP OOG to open a new grievance log number because the OOG did not provide 6 supporting documentation to substantiate that Plaintiff received the clothing and linens on July 5, 7 2023. (UF 10.) Plaintiff received and accepted the items during open line at facility C's laundry.

8 (Garcia Decl., Ex. C.) Plaintiff did not mention Officer Fiori in this grievance, nor does Plaintiff 9 allege that Officer Fiori even worked in facility C-2. (UF 9.) Accordingly, this grievance did not 10 alert KVSP about Plaintiff's alleged attempts to request assistance from Officer Fiori to obtain the 11 linens and laundry items.

The KVSP OOG response to this grievance shows that it was unaware 12 that Plaintiff's allegations involved Officer Fiori at all. Thus, Plaintiff cannot argue that this 13 grievance put KVSP on notice that Officer Fiori was deliberately indifferent to Plaintiff's missing 14 clothes or linens and his inability of obtain the items from laundry. 15 Grievance Log No. 459162, received by the OOG on October 4, 2023, was opened by the 16 OOG at the request of the OOA's response to Appeal Log No. 416333.

In the Grievance Log No. 17 459162 OOG decision, the OOG referred to "Grievance Log# 460149." This was a clerical error. 18 Grievance Log No. 460149 belongs to another inmate, not Plaintiff. The correct grievance 19 considered by the OOG in this decision was Grievance Log No. 416333. (UF 11.)

The OOG 20 opened Grievance Log No. 459162 and addressed the issues raised by the OOA decision. (Garcia 21 Decl. ¶ 10.) Grievance Log No. 459162 was granted by the OOG. (Garcia Decl., Ex. C.) This 22 time, the OOG reviewed a relevant satisfaction form. (Id.) Plaintiff appealed the Grievance Log 23 No. 459162 decision.

In Appeal Log No. 459162, Plaintiff alleged that on November 5, 2023, 24 Plaintiff asked an officer for compensation for missing items while on C and D yards. Plaintiff 25 also attached an inmate request for interview form in which Plaintiff alleged that Plaintiff put the 26 laundry unit and program office on Facility C on notice regarding the issue. Plaintiff made no 27 reference to Officer Fiori in this appeal.

Appeal Log No. 459162 (an appeal of Grievance Log 28 No. 459162) was denied on January 24, 2024. (UF 12.) 1 Prison regulations require the claimant to include a description of all information known 2 and available to the claimant regarding the claim, including "... names and titles of all involved 3 departmental staff (or a description of those staff)[.]" Cal. Code Regs. tit.

15, § 3482(c)(1). For 4 administrative remedies to be exhausted by California prisoners as to defendants who were not 5 identified in the grievance, there must be a "sufficient connection" between the claim in the 6 grievance and the unidentified defendants such that prison officials can

be said to have had 7 “notice of the alleged deprivation” and an “opportunity to resolve it.” See Reyes v. Smith, 810 F.3d 654, 659 (9th Cir.

2016) (finding that a prisoner’s grievance notified the institution despite 9 not identifying defendant doctors because there was sufficient connection between plaintiff’s 10 alleged inadequate pain management and the defendant who served on the pain management 11 committee). 12 Here, Plaintiff’s grievances did not mention Officer Fiori. Any argument that Plaintiff did 13 not know Officer Fiori’s name prior to Log Nos. 41633 and 459162 is without merit, because 14 Plaintiff identified Officer Fiori in a prior grievance (log no. 405908) based on unrelated 15 allegations submitted nearly a month before.

(DUF 9, 18.) Thus, it is clear Plaintiff knew who 16 Officer Fiori was, but did not name him in Grievance Log Nos. 416333 or 459162. There is 17 nothing in these grievances to alert prison officials that Officer Fiori was personally involved in 18 or even informed of Plaintiff’s missing laundry and linens. Further, Appeal Log No. 45162 was 19 denied on January 24, 2024, months after Plaintiff had already filed the original complaint in this 20 matter on November 14, 2023, and the first amended complaint on December 29, 2023.

21 Therefore, although Plaintiff appealed Log Nos. 416333 and 45162, he failed to identify Officer 22 Fiori, making the grievances insufficient to exhaust the claim against Officer Fiori. 23 2. Log Nos. 470241, 468345, 458793, and 405908 Mentioned Officer Fiori But Are 24 Unrelated to the Allegations in This Lawsuit 25 As previously stated, this action proceeds on Plaintiff’s claim that officer Fiori knew of 26 Plaintiff’s safety concerns and that he was missing linens and laundry items, but did not help 27 Plaintiff obtain them.

28 /// 1 In Grievance Log No. 470241, received by the OOG on October 26, 2023, Plaintiff 2 alleged that he had not received a tablet, charger, earbuds, or a quarterly package he ordered since 3 arriving to KVSP on May 17, 2023. Plaintiff also claimed that “[he was] not in ASU for any... 4 wrong doings so all [he sees] from here regarding the lawsuit against Officer Fiori on the D yard 5 here at KVSP (D6) 3rd watch the legal duty breach regarding the state of CA, or city of Delano 6 County of Kern [sic] [.]” However, there was no mention of the relevant allegations.

(UF 15.) 7 In Grievance Log No. 468345, received on October 23, 2023, Plaintiff alleged that Officer 8 Fiori mishandled all of Plaintiff’s Office of Appeals responses on unspecified dates. However, 9 there was no mention of the relevant allegations. (UF 16.) 10 In Grievance Log No. 458793, received on October 3, 2023, Plaintiff alleged that he 11 submitted a staff misconduct grievance regarding Officer Fiori, but “all due process steps were 12 overlooked and never taking the investigation was one sided and extremely bias [sic]” on an 13 unspecified date.

However, there was no mention of the relevant allegations. (UF 17.) 14 In Grievance Log No. 405908, received on May 31, 2023, Plaintiff alleged that Officer 15 Fiori gave two of Plaintiff’s

grievances to another inmate on an unspecified date, violating his 16 rights under the Eighth Amendment.

However, there was no mention of the relevant allegations. 17 (UF 18.) 18 Plaintiff did not identify missing laundry and linens as the grieved-of conduct in any of 19 the four grievances in which he named Officer Fiori.

Thus, Plaintiff did not put KVSP on notice 20 of Officer Fiori's alleged role in Plaintiff's missing linens and laundry. 21 Although Plaintiff's first amended complaint states that he exhausted the administrative 22 remedies, Plaintiff did not file an opposition and the evidence presented by Defendant Fiori 23 demonstrates that he did not properly exhaust his deliberate indifference claim.

Accordingly, 24 Plaintiff has failed to meet his burden in demonstrating that there is something in his particular 25 case that made the existing and generally available administrative remedies effectively 26 unavailable to him. Albino, 747 F.3d at 1172.

Therefore, Defendant's motion for summary 27 judgment should be granted, and the instant action should be dismissed, without prejudice. 28 /// 1 IV. 2 RECOMMENDATIONS 3 Based on the foregoing, it is HEREBY RECOMMENDED that: 4 1. Defendant's motion for summary judgment for failure to exhaust the 5 administrative remedies be granted; and 6 2.

The instant action be dismissed, without prejudice. 7 These Findings and Recommendations will be submitted to the United States District 8 | Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen 9 | (14) days after being served with these Findings and Recommendations, the parties may file 10 | written objections with the Court, limited to 15 pages in length, including exhibits.

The 11 | document should be captioned "Objections to Magistrate Judge's Findings and 12 | Recommendations." The parties are advised that failure to file objections within the specified 13 | time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 14 | (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir.

1991)). 15 16 IT IS SO ORDERED. DAM Le 17 | Dated: _June 26, 2025 _ OO STANLEY A. BOONE 18 United States Magistrate Judge 19 20 21 22 23 24 25 26 27 28 13