

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
EASTERN DIVISION**

**DONALD MILES**

**PLAINTIFF**

**v.**

**Case No. 2:16-cv-00036-KGB-JTK**

**SANDRA FUTRELL, et al.**

**DEFENDANTS**

**ORDER**


The Court has reviewed the Proposed Findings and Recommendations submitted by United States Magistrate Judge Jerome T. Kearney (Dkt. No. 47). Plaintiff Donald Miles filed objections to the Proposed Findings and Recommendations (Dkt. No. 49). After careful consideration of the Proposed Findings and Recommendations and Mr. Miles's objections, and a *de novo* review of the record, the Court concludes that the Proposed Findings and Recommendations should be, and hereby are, approved and adopted in their entirety as this Court's findings in all respects (Dkt. No. 47).

The Court writes separately to address Mr. Miles's objections (Dkt. No. 49). Mr. Miles contends, among other things, that Judge Kearney's assessment regarding Mr. Miles's administrative grievance filings is incorrect. Mr. Miles agrees with Judge Kearney's assessment that the administrative grievance procedure begins with a BP form, but he argues that he requested such a form on April 17, 2014. Mr. Miles states that his amended complaint shows this written request (Dkt. No. 8, at 36–37). Mr. Miles further contends that he filled out the BP-9 form on or about April 21, 2014, and subsequently gave the form to his designated authority, Counselor Lloyd (Dkt. No. 49, at 2). Mr. Miles claims that he was placed in SHU lockup, or solitary confinement, on or about April 3, 2014, and that this hindered his ability to follow up on his grievance. Mr. Miles also contends that he attempted numerous times, both verbally and in

writing, to make sure his BP-9 form was received. The Court notes that Mr. Miles made this same argument in his response to the motion for summary judgment, and Judge Kearney addressed the argument in his Proposed Findings and Recommendations, citing *Chelette v. Harris*, 229 F.2d 684, 688 (8th Cir. 2000) (Dkt. No. 47, at 9).

The Court grants defendants' motion to dismiss, or in the alternative, partial motion for summary judgment (Dkt. No. 33). The Court dismisses without prejudice Mr. Miles's claims filed pursuant to *Bivens v. Six Unknown Agents*, 403 U.S. 388 (1971), against defendants Cunningham, Futrell, Loveday, Maples, and Weyant for failure to exhaust administrative remedies.

So ordered this 27th day of February, 2017.

  
\_\_\_\_\_  
Kristine G. Baker  
United States District Judge