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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MICHAEL EUGENE HOLLIS,

Plaintiff,

v.

RUSSELL YORK, et al.,

Defendants.

CASE NO. 1:09-cv-00463-AWI-BAM PC

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
ACTION FOR FAILURE TO EXHAUST
ADMINISTRATIVE REMEDIES

(ECF Nos. 70, 74, 79, 82, 84, 85)

ORDER STRIKING PLAINTIFF’S UNSIGNED
MOTION FOR A CHANGE OF VENUE

(ECF No. 86)

Plaintiff Michael Eugene Hollis (“Plaintiff”) is a federal prisoner proceeding pro se and in forma pauperis in this civil action pursuant to 42 U.S.C. § 1983.¹ The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On October 22, 2012, [findings and recommendations](#) issued recommending granting Defendants’ [motion to dismiss](#) for failure to exhaust administrative remedies and notifying the parties that objections were to be filed within thirty days. (ECF No. 82.) On November 29, 2012, Plaintiff filed [objections](#) to the findings and recommendations, a [list of disputed facts](#), and an unsigned [motion for a change of venue](#). (ECF Nos. 84, 85, 86.) Defendants filed an [opposition](#) to the motion for a change of venue and a [response](#) to the objections on December 10, 2012. (ECF No. 87, 88.)

¹ Although Plaintiff is a federal prisoner, the incidents alleged in the complaint occurred while he was housed at the Fresno County Jail.

1 Unsigned documents cannot be considered by the Court, and Plaintiff's motion for a change
2 of venue is stricken from the record on that ground. Fed. R. Civ. P. 11(a); Local Rule 131(b).

3 This action is proceeding on Plaintiff's claim that Defendants Calvert and Dawson were
4 deliberately indifferent to Plaintiff's conditions of confinement in November 2008 while responding
5 to his grievance that he was subjected to freezing cold temperatures. (Findings and
6 Recommendations Recommending Dismissing Certain Claim and Defendants 3:16-21, 6:11-7:6,
7 ECF No. 51.) In his objection to the findings and recommendations, Plaintiff submits a grievance
8 he submitted on February 27, 2009, complaining about the food services manager in which he states
9 he was placed in extreme cold in a disciplinary cell. For the type of grievance, Plaintiff marked food
10 and maintenance. Plaintiff claims that this grievance was never responded to. Plaintiff also submits
11 a grievance filed February 25, 2009, in which the type of grievance was marked disciplinary and
12 officer conduct. In this grievance, he also mentions the extreme cold. Defendants argue that
13 Plaintiff did not object to any of the actual findings issued by the Magistrate Judge and the Court
14 should not consider new evidence submitted with his objection.

15 Initially, the PLRA requires proper exhaustion of administrative remedies which means the
16 inmate must comply with all procedural requirements of the institutions' grievance process.
17 Woodford v. Ngo, 548 U.S. 81, 93-95 (2006). The grievance form clearly states that the grievance
18 form is limited to one grievable issue per form. A review of these forms shows that Plaintiff's
19 primary grievance for these appeals was not the cold temperatures he was subjected to in February
20 2009. In the February 27, 2009, grievance Plaintiff complained about the lack of food and the greed
21 of Canteen, Inc. (ECF No. 85 at 4.) In the February 25, 2009 grievance Plaintiff grieved that
22 officers had conspired against him and he had wrongfully been placed in disciplinary segregation and
23 removed from the medical housing unit. Plaintiff complained that at his disciplinary hearing he had
24 been told he would do five days, but had been left "to rot twenty five additional days." (Id. at 5.)

25 In order to find that Plaintiff's appeals exhausted his administrative remedies the appeals
26 must " provide enough information . . . to allow prison officials to take appropriate responsive
27 measures." Griffin v. Arpaio, 557 F.3d 1117, 1121 (9th Cir. 2009) (quoting Johnson v. Testman,
28 380 F.3d 691, 697 (2nd Cir. 2004)). The primary purpose of the grievance is to alert the prison to

1 the problem and facilitate resolution. Griffin, 557 F.3d at 1120. “A grievance suffices to exhaust
2 a claim if it puts the prison on adequate notice of the problem for which the prisoner seeks redress.”
3 Sapp v. Kimbrell, 623 F.3d. 813, 823 (9th Cir. 2010)

4 The claims against Defendants Calvert and Dawson occurred in November 2008, and the
5 regulations in effect when Plaintiff was housed at Fresno County Jail state that inmates are provided
6 with an inmate grievance form by FCJ staff and the grievance must be filed within fourteen days of
7 the incident being grieved.² (Inmate Grievance Policies and Procedures 4, ECF No. 70-4.) The
8 grievances submitted by Plaintiff to support his opposition were filed after Plaintiff had been
9 transferred to a different section of the jail and were grieving the conditions he was subjected to at
10 that time. These grievances were filed three months after the claims against Defendant Calvert and
11 Dawson that are at issue in this action and clearly are outside the fourteen days as required by the
12 regulations. Further, they do not refer to Plaintiff’s conditions of confinement in 2008 prior to his
13 transfer. Nothing in these grievances would place jail officials on notice of Plaintiff’s complaints
14 regarding Defendants Calvert and Dawson’s investigation of his earlier grievance while housed in
15 a different section of the jail. These grievances do not suffice to exhaust the claims proceeding in
16 this action.

17 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a
18 de novo review of this case. Having carefully reviewed the entire file, the undersigned finds the
19 findings and recommendations to be supported by the record and by proper analysis.

20 Accordingly, IT IS HEREBY ORDERED that:

- 21 1. The findings and recommendations, filed October 22, 2012, is adopted in full;
- 22 2. Defendants’ motion to dismiss for failure to exhaust, filed June 29, 2012, is
23 GRANTED;
- 24 3. Plaintiff’s unsigned motion for a change of venue, filed November 29, 2012, is
25 STRICKEN from the record;
- 26 4. All pending motions are terminated; and

27 _____
28 ²Defendants have provided two versions of the inmate handbook that were in use during the relevant time
period. The Court has reviewed the grievance procedures set forth and they are identical in both of the handbooks.

1 5. This action is dismissed, without prejudice, for Plaintiff's failure to exhaust
2 administrative remedies.

3 IT IS SO ORDERED.

4 Dated: March 26, 2013



SENIOR DISTRICT JUDGE

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