

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SKYLER McMILLION,

No. 1:24-cv-01557-KES-SAB (PC)

Plaintiff,

ORDER VACATING FINDINGS AND
RECOMMENDATIONS, AND DENYING
MOTION FOR EXTENSION OF TIME AS
UNNECESSARY

V.

J. DOER, et al.,

(ECF Nos. 7, 15)

Defendants.

Plaintiff is proceeding pro se and in forma pauperis in this civil rights complaint pursuant to Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971).

On December 20, 2024, the Court ordered Plaintiff to show cause why the action should not be dismissed, without prejudice, for failure to exhaust the administrative remedies. (ECF No. 5.) Plaintiff did not file a response, and Findings and Recommendations recommending dismissal of the action were issued on January 22, 2025. (ECF No. 7.)

After receiving an extension of time, Plaintiff filed a response to the now-discharged order to show cause, motion for 90-day extension of time for all pending deadlines, and motion to create a class action.¹ (ECF Nos. 14, 15, 16.)

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¹ Plaintiff's motion for class action is addressed by separate order.

1 In response to the order to show cause as the exhaustion of the administrative remedies,
2 Plaintiff contends that the lack of exhaustion of the administrative remedies is not clear from the
3 face of the complaint because the “administrative remedies were unavailable.” (ECF No. 13 at
4 6.)² Based on Plaintiff’s contentions in the current response to the order to show cause, the Court
5 will vacate the Findings and Recommendations recommending dismissal of the action for failure
6 to exhaust. (ECF No. 7.) However, because exhaustion of the administrative remedies is an
7 affirmative defense, the Court makes no ruling as to whether Plaintiff has, in fact, exhausted the
8 administrative remedies. Inasmuch as the Court will vacate the Findings and Recommendations
9 recommending dismissal for failure to exhaust, Plaintiff’s motion for an extension of time to
10 comply with all future deadlines is denied as unnecessary as there are currently no pending
11 deadlines in light of this order. (ECF No. 15.) Plaintiff is advised the Court will screen his
12 complaint pursuant to 28 U.S.C. § 1915A in due course.

13 || Accordingly, it is HEREBY ORDERED that:

IT IS SO ORDERED.

21 | Dated: **March 4, 2025**



STANLEY A. BOONE
United States Magistrate Judge

²⁸ Plaintiff also submits that there is a delay of 30 to 60 days in receipt of the mail at the United States Penitentiary in Atwater. (ECF No. 15.)