

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JACK MANN,

Plaintiff,

Case No. 15-cv-12869

Hon. Matthew F. Leitman

v.

SOE SCHLOTTMAN, *et al.*,

Defendants.

**NOTICE AND ORDER CONCERNING COURT'S INTENT TO TREAT MOTION TO
DISMISS (ECF #44), IN PART, AS ONE FOR SUMMARY JUDGMENT**

Plaintiff Jack Mann (“Mann”) is an inmate in the custody of the Federal Bureau of Prisons (the “BOP”). On August 7, 2015, Mann brought a *pro se* action against Defendants. (*See* Complaint, ECF #1). On July 6, 2016, Mann filed an Amended Complaint. (*See* Amended Complaint, ECF #31.)

On December 6, 2016, Defendants filed a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure (the “FRCP”). (*See* ECF #44.) In that motion, Defendants argue, among other things, that the Court should dismiss Mann’s constitutional claims because Mann “has failed to exhaust a claim of constitutional harm in the prison grievance system” (the “Exhaustion Defense”). (*Id.* at 18-20, Pg. ID 347-349.) In support of the Exhaustion Defense, Defendants attach a Declaration by Heather MacConnell and a BOP report indicating that

Mann never sought administrative relief for his constitutional claims. (*See* ECF #44-3.)

Rule 12(d) of the FRCP states:

If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all material that is pertinent to the motion.

Because Defendants support their Exhaustion Defense with evidence outside the scope of the allegations found in Mann's Amended Complaint, the Court will treat the Exhaustion Defense as if it was presented in a motion for summary judgment under Rule 56 of the FRCP rather than in a Motion to Dismiss under Rule 12(b)(6) of the FRCP. Mann shall have until **February 21, 2017**, to submit evidence in opposition to Defendants' Exhaustion Defense or otherwise show that the Court should not grant summary judgment on that defense. Notwithstanding the Court's January 19, 2017 order (ECF #56), the Clerk of the Court is ordered to accept a filing by Mann that is responsive to this Order.

IT IS SO ORDERED.

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

Dated: January 24, 2017

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on January 24, 2017, by electronic means and/or ordinary mail.

s/Holly A. Monda_____

Case Manager

(313) 234-5113