

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION**

JOHN C. RODRIGUEZ

PLAINTIFF

v.

No. 3:20CV32-NBB-RP

**CALIFORNIA DEPARTMENT OF CORRECTIONS
DR. THOMAS**

DEFENDANTS

FINAL JUDGMENT

In accordance with the memorandum opinion entered this day, the instant case is **DISMISSED** with prejudice as frivolous, counting as a “**STRIKE**” under 28 U.S.C. § 1915(g); in the alternative, the case is **DISMISSED** without prejudice for failure to exhaust administrative remedies.¹

SO ORDERED, this, the 27th day of January, 2023.

/s/ Neal Biggers

NEAL B. BIGGERS, JR

UNITED STATES DISTRICT JUDGE

¹ The court has discretion to dismiss a prisoner § 1983 case both on the merits, and, in the alternative, for failure to exhaust administrative remedies. *See Martinez v. Bus Driver*, 344 F. App’x 46, 49 (5th Cir. 2009) (per curiam) (upholding district court’s dismissal of prisoner § 1983 case both on the merits and, alternatively, for failure to exhaust administrative remedies); *see also Gonzalez v. Prasifka*, 54 F. App’x 406 (5th Cir. 2002) (District Court “did not err in dismissing [the plaintiff’s § 1983] action [on the merits and] on the alternative ground that he failed to exhaust his administrative remedies.”)