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BILLINGS DIV.
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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

SHELLEY ANN TISCHLER,	
Plaintiff,	**CV-07-173-BLG-RFC-CSO**
vs.	
JO ACTON, Warden of Montana Women's Prison, et al.,	**ORDER ADOPTING FINDINGS AND RECOMMENDATIONS OF U.S. MAGISTRATE JUDGE**
Defendants.	

Plaintiff Shelley Tischler, a state prisoner proceeding pro se and in forma pauperis, alleges in the instant § 1983 action that the staff at the Montana Women's Prison mistreated and discriminated against her because she is Jewish. On February 10, 2009 United States Magistrate Judge Carolyn Ostby entered Findings and Recommendation (*Doc. 28*) with respect to Defendants' Motion to Dismiss for Failure to Exhaust Administrative Remedies (*Doc. 22*). Magistrate Judge Ostby recommends that the motion be granted and this case be dismissed without prejudice for failure to exhaust administrative remedies.

Upon service of a magistrate judge's findings and recommendation, a party has 10 days to file written objections. 28 U.S.C. § 636(b)(1). In this matter,

Plaintiff has filed three separate sets of objections. *Docs. 29, 30 & 31.* Plaintiffs' objections require this Court to make a *de novo* determination of those portions of the Findings and Recommendations to which objection is made. 28 U.S.C. § 636(b)(1). Plaintiff's objections are not well-taken.

Magistrate Judge Ostby correctly notes that the Prison Litigation Reform Act expressly requires the exhaustion of administrative remedies within the prison system before a prisoner may file any federal action complaining of prison conditions. 42 U.S.C. § 1997(e)(a); *see also Porter v. Nussle,* 534 U.S. 516, 524-25 (2002). Further, the Montana Women's Prison has instituted grievance procedure involving four levels, with an appeal to the Director of the Department of Corrections as the final level.

Because there is no evidence that Tischler filed an appeal to the Director of the Department of Corrections before the filing of this lawsuit, Magistrate Ostby concluded that she has not exhausted her administrative remedies and that her complaint must be dismissed. Despite the voluminous objections and exhibits thereto, Tischler is unable to make any showing that she exhausted her administrative remedies. Accordingly, after a de novo review, the Court determines the Findings and Recommendation of Magistrate Judge Ostby are well grounded in law and fact and adopts them in their entirety.

IT IS HEREBY ORDERED that Defendants' Motion to Dismiss (*Doc. 22*) is **GRANTED:** Plaintiff's Amended Complaints (*Docs. 16 & 27*) are **DISMISSED WITHOUT PREJUDICE.**

This Court certifies pursuant to Rule 24(a)(4)(A) Fed.R.App.P. that any appeal of this Order would not be in good faith.

The Clerk of Court shall notify the parties of the entry of this Order, close this case, and enter judgment by separate document.

DATED this 5th day of March, 2009.

RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE