

FILED

JAN 28 2013

**Clerk, U.S. District Court
District Of Montana
Missoula**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION**

FRANKLIN CORBIN EASTMAN,)
)
Plaintiff,)
v.)
)
ROSS SWANSON, and others,)
)
Defendants.)
_____)

CV 11-73-M-DWM-JCL

ORDER

The defendants move to dismiss this case for failure to exhaust administrative remedies. And Franklin Eastman moves to dismiss the case without prejudice. Magistrate Judge Strong recommends granting both motions and dismissing the case without prejudice. The Court adopts his Findings and Recommendation in full.

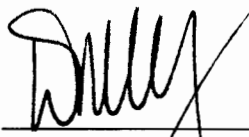
The parties are entitled to a de novo review of the specified findings or recommendations to which they timely objected. 28 U.S.C. § 636(b)(1). But the portions of Judge Strong’s Findings and Recommendations not specifically

objected to are reviewed for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981).

Neither party objected to Judge Strong's Findings and Recommendation, and it is not clearly erroneous. Eastman did not file a response to the defendants' motion to dismiss and, instead, asked the Court to dismiss the case without prejudice. He therefore concedes that he did not exhaust his administrative remedies in accordance with the Prison Litigation Reform Act. *See* 42 U.S.C. § 1997e(a). As a result, dismissal is appropriate.

IT IS ORDERED that Judge Strong's Findings and Recommendations (doc. 35) is ADOPTED IN FULL. The defendants' motion for summary judgment (doc. 26) and Eastman's motion to dismiss (doc. 33) are GRANTED. This case is DISMISSED WITHOUT PREJUDICE. The Clerk of Court is directed to close this case.

Dated this 29th day of January 2013.



Donald W. Molloy, District Judge
United States District Court