

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

KERMIT POULSON,

Plaintiff,

vs.

DERICK BUDD, BEAU BALTEZAR,
GARRETT KENT, SAM SHORT,
JOSH SWEENEY, AND JASON
TRUDEAU,

Defendants.

CV 14-43-H-DLC-JTJ

ORDER

FILED

SEP 06 2016

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

United States Magistrate Judge John Johnston entered his Order, Findings and Recommendations in this matter on August 11, 2016, recommending that Defendants' Motion for Summary Judgment for Failure to Exhaust Administrative Remedies (Doc. 70) be granted, the remaining Motions for Summary Judgment (Docs. 66, 82) be denied as moot, and this action dismissed. Plaintiff Kermit Poulson ("Poulson") failed to timely object to the Findings and Recommendations, and so waived his right to de novo review of the record. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985).

Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

Having reviewed the Findings and Recommendations, the Court finds no clear error in Judge Johnston’s conclusions that: (1) the Inmate Grievance Program was available to Poulson; (2) he was aware of the program; and (3) he failed to complete the grievance process. As such, Poulson has failed to exhaust the administrative remedies available to him and Defendants’ motion will be granted.

Two additional motions for Summary Judgment are also pending. Because the Court will adopt the recommendation to dismiss this case with prejudice, the Court will deny these motions as moot.

Accordingly, IT IS ORDERED that:

(1) Judge Johnston’s Findings and Recommendations (Doc. 91) are ADOPTED IN FULL.

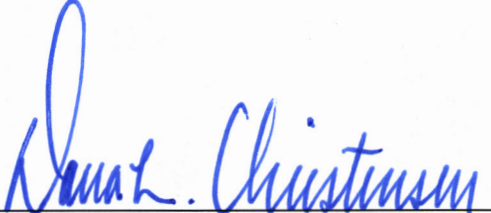
(2) Defendants’ Motion for Summary Judgment for Failure to Exhaust Administrative Remedies (Doc. 70) is GRANTED, and this matter is DISMISSED with prejudice. The Clerk of Court is directed to close this matter, and enter judgment in favor of the Defendants pursuant to Rule 58 of the Federal Rules of

Civil Procedure.

(3) Poulson's Motion for Summary Judgment (Doc. 66) and Defendants' Cross Motion for Summary Judgment (Doc. 82) are DENIED AS MOOT.

(4) The Clerk of Court is directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith. No reasonable person could suppose an appeal would have merit. The record makes plain the instant Complaint lacks arguable substance in law or fact.

Dated this 6th day of September, 2016.



Dana L. Christensen, Chief Judge
United States District Court