

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Hearne v. Farhat

Hearne · No. 2:20-cv-00557-DAD-DB (PC) · Decided March 13, 2023

OPINION

(PC) Hearne v. Farhat

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 JOHN ANDREW HEARNE, No. 2:20-cv-00557-DAD-DB (PC)

12 Plaintiff,

13 v. ORDER ADOPTING FINDINGS AND

RECOMMENDATIONS AND GRANTING

14 FARHAT, et al., DEFENDANTS' MOTION FOR SUMMARY

JUDGMENT

15 Defendants. (Doc. Nos. 80, 100) 16 17 Plaintiff John Andrew Hearne is a state prisoner
proceeding pro se in this civil rights 18 action brought under 42 U.S.C. § 1983. The matter was
referred to a United States Magistrate 19 Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local
Rule 302. 20 On January 23, 2023, the assigned magistrate judge issued findings and
recommendations 21 recommending that defendants' motion for summary judgment (Doc. No. 80)
be granted due to 22 plaintiff's failure to exhaust his administrative remedies prior to filing suit as
is required. (Doc.

23 No. 100.) The findings and recommendations were served on the parties and contained notice
24 that any objections thereto were to be filed within twenty (20) days after service. (Id. at 16.) On
25 February 13, 2023, plaintiff filed objections to the pending findings and recommendations.
(Doc.

26 No. 102.) Defendants did not file a response thereto or objections of their own.

27 In his objections, plaintiff largely reiterates arguments raised in his opposition to 28
defendants' motion for summary judgment and addressed by the pending findings and 1
recommendations. (Doc. No. 102.) Specifically, plaintiff acknowledges that he filed his inmate 2
appeal, Log No. CHCF-C-19-04940, after the thirty-day time period in which to file a grievance 3
had expired, but he argues that prison officials improperly screened and cancelled that appeal as 4
untimely. (Id. at 6–7.) According to plaintiff, the prison officials should have extended that 5

deadline because he was briefly hospitalized during part of that thirty-day period. (Id.) However, 6 as the magistrate judge explained in the pending findings and recommendations, plaintiff did not 7 exhaust his administrative remedies because he could have filed a separate appeal seeking review 8 of the prison officials' cancellation decision, but he did not do so. (See Doc. No. 100 at 15) 9 (citing *Ranson v. Aquirre*, No. 1:12-cv-1343-AWI-DLB, 2013 WL 5923104, at *7 (E.D. Cal. 10 Nov. 1, 2013) (a cancelled grievance does not exhaust administrative remedies because a separate 11 appeal could have been filed on the cancellation decision)). In addition, the magistrate judge 12 noted that the evidence before the court on summary judgment reflected that plaintiff had filed at 13 least one (unrelated) inmate appeal during that same thirty-day period, despite his brief 14 hospitalization. (Doc. No. 100 at 15.) Thus, plaintiff's objections provide no basis upon which to 15 reject the pending findings and recommendations. 16 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a 17 de novo review of the case. Having carefully reviewed the entire file, including plaintiff's 18 objections, the court concludes that the findings and recommendations are supported by the 19 record and by proper analysis. 20 Accordingly, 21 1. The findings and recommendations issued on January 23, 2023 (Doc. No. 100) are 22 adopted in full; 23 2. Defendants' motion for summary judgment based upon plaintiff's failure to 24 exhaust his administrative remedies, with respect to the claims presented in this 25 action, prior to filing suit as required (Doc. No. 80) is granted; 26 ///// 27 ///// 28 ///// 1 3. This case is dismissed without prejudice; and 2 4. The Clerk of the Court is directed to close this case. 3 IT IS SO ORDERED. * | Dated: _March 10, 2023 Dab A. 2, eel

5 UNITED STATES DISTRICTY JUDGE

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