

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

McMillion v. Doer

McMillion · No. No. 1:24-cv-01557-KES-SAB (PC) · Decided March 5, 2025

SUMMARY

The United States District Court for the Eastern District of California vacated findings and recommendations recommending dismissal of Skyler McMillion’s Bivens action for failure to exhaust administrative remedies. The court denied as unnecessary McMillion’s motion for an extension of time because no deadlines were pending, and stated that it would screen the complaint under 28 U.S.C. § 1915A.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Stanley A. Boone
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	March 5, 2025
DOCKET	No. 1:24-cv-01557-KES-SAB (PC)
DISPOSITION	vacated
PROCEDURAL POSTURE	Plaintiff, proceeding pro se and in forma pauperis, filed a Bivens civil-rights complaint. After the court issued an order to show cause concerning failure to exhaust administrative remedies and issued findings and recommendations recommending dismissal, Plaintiff responded and sought an extension of time. The court vacated the findings and recommendations and denied the extension motion as unnecessary.
PRECEDENTIAL VALUE	unpublished
PARTIES	Skyler McMillion v. J. Doer, et al.

TOPICS

- civil rights
- prisoners rights
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the findings and recommendations recommending dismissal for failure to exhaust administrative remedies should be vacated after Plaintiff asserted that administrative remedies were unavailable.
2. Whether Plaintiff's motion for a 90-day extension of time for pending deadlines should be granted when no deadlines remained pending.

HOLDINGS

1. The court vacated the findings and recommendations recommending dismissal because Plaintiff's response asserted that administrative remedies were unavailable, but the court did not determine whether Plaintiff had actually exhausted administrative remedies.
2. The motion for an extension of time was denied as unnecessary because vacating the findings and recommendations left no pending deadlines requiring an extension.

KEY QUOTATIONS

“However, because exhaustion of the administrative remedies is an affirmative defense, the Court makes no ruling as to whether Plaintiff has, in fact, exhausted the administrative remedies.” (at 2)

FACTUAL BACKGROUND

Skyler McMillion filed a pro se, in forma pauperis civil-rights complaint under Bivens. In response to an order to show cause regarding exhaustion, McMillion asserted that administrative remedies were unavailable and also reported delays in receiving mail at his correctional institution. The court concluded that these contentions warranted vacating the earlier recommendation of dismissal, without deciding whether McMillion actually exhausted available administrative remedies.

PROCEDURAL HISTORY

On December 20, 2024, the court ordered Plaintiff to show cause why the action should not be dismissed without prejudice for failure to exhaust administrative remedies. Plaintiff did not initially respond, and findings and recommendations recommending dismissal were issued on January 22, 2025. After receiving an extension, Plaintiff submitted a response asserting that administrative remedies were unavailable, and the court vacated the findings and recommendations while reserving the exhaustion issue for later proceedings.

DISPOSITION

vacated

CASES CITED

- Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971)

OPINION

(PC) McMillion v. Doer

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10

11 SKYLER McMILLION, No. 1:24-cv-01557-KES-SAB (PC)

12 Plaintiff, ORDER VACATING FINDINGS AND

RECOMMENDATIONS, AND DENYING

13 v. MOTION FOR EXTENSION OF TIME AS

UNNECESSARY

14 J. DOER, et al., (ECF Nos. 7, 15) 15 Defendants. 16 17 18 Plaintiff is proceeding pro se and in
forma pauperis in this civil rights complaint pursuant 19 to *Bivens v. Six Unknown Federal
Narcotics Agents*, 403 U.S. 388 (1971). 20 On December 20, 2024, the Court ordered Plaintiff to
show cause why the action should 21 not be dismissed, without prejudice, for failure to exhaust
the administrative remedies. (ECF No. 22 5.) Plaintiff did not file a response, and Findings and
Recommendations recommending dismissal 23 of the action were issued on January 22, 2025.
(ECF No. 7.) 24 After receiving an extension of time, Plaintiff filed a response to the now-
discharged order 25 to show cause, motion for 90-day extension of time for all pending deadlines,
and motion to 26 create a class action.¹ (ECF Nos. 14, 15, 16.) 27 /// 28 1 Plaintiff's motion for
class action is addressed by separate order.

Oe SN EISEN OE IIR OR ESI IIR III IIE

1 In response to the order to show cause as the exhaustion of the administrative remedies, 2 |
Plaintiff contends that the lack of exhaustion of the administrative remedies is not clear from the 3
| face of the complaint because the “administrative remedies were unavailable.” (ECF No. 13 at 4 |
6.)? Based on Plaintiff's contentions in the current response to the order to show cause, the Court 5
| will vacate the Findings and Recommendations recommending dismissal of the action for failure
6 || to exhaust. (ECF No. 7.) However, because exhaustion of the administrative remedies is an 7 |
affirmative defense, the Court makes no ruling as to whether Plaintiff has, in fact, exhausted the 8 |
administrative remedies. Inasmuch as the Court will vacate the Findings and Recommendations 9
|| recommending dismissal for failure to exhaust, Plaintiff's motion for an extension of time to 10 |
comply with all future deadlines is denied as unnecessary as there are currently no pending 11 |
deadlines in light of this order. (ECF No. 15.) Plaintiff is advised the Court will screen his 12 |
complaint pursuant to 28 U.S.C. § 1915A in due course. 13 Accordingly, it is HEREBY
ORDERED that: 14 1. The Findings and Recommendations issued on January 22, 2025 (ECF No.
7), are 15 VACATED; and 16 2. Plaintiff's motion for an extension of time filed on March 3, 2025
(ECF No. 15) is 17 DENIED as unnecessary. 18 19

20 IT IS SO ORDERED. DAM Le

21 | Dated: _March 4, 2025 _ ef

STANLEY A. BOONE

22 United States Magistrate Judge 23 24 25 26 27 ? Plaintiff also submits that there is a delay of
30 to 60 days in receipt of the mail at the United States Penitentiary in 28 | Atwater. (ECF No. 15.)