

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

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OPINION

(PC) McMillion v. Doer

PER CURIAM.

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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.<sup>1</sup> (ECF Nos. 14, 15, 16.) 27 /// 28 1 Plaintiff’s motion for  
class action is addressed by separate order.

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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.)