

Exhibit - D-1

FILED: May 21, 2020

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 19-7360  
(5:19-cv-00014-FPS)

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TODD GLENN DEAN

Plaintiff - Appellant

v.

F. ENTZEL, Warden; CHAPLAIN MARIA; CHAPLAIN FUENTES;  
SUPERVISORY CHAPLAIN; UNKNOWN AGENTS

Defendants - Appellees

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J U D G M E N T

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In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

Exhibit-D-2

FILED: May 21, 2020

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

No. 19-7360, Todd Dean v. F. Entzel  
5:19-cv-00014-FPS

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NOTICE OF JUDGMENT

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Judgment was entered on this date in accordance with Fed. R. App. P. 36. Please be advised of the following time periods:

**PETITION FOR WRIT OF CERTIORARI:** To be timely, a petition for certiorari must be filed in the United States Supreme Court within 90 days of this court's entry of judgment. The time does not run from issuance of the mandate. If a petition for panel or en banc rehearing is timely filed, the time runs from denial of that petition. Review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only for compelling reasons. ([www.supremecourt.gov](http://www.supremecourt.gov))

**VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED COUNSEL:**  
Vouchers must be submitted within 60 days of entry of judgment or denial of rehearing, whichever is later. If counsel files a petition for certiorari, the 60-day period runs from filing the certiorari petition. (Loc. R. 46(d)). If payment is being made from CJA funds, counsel should submit the CJA 20 or CJA 30 Voucher through the CJA eVoucher system. In cases not covered by the Criminal Justice Act, counsel should submit the Assigned Counsel Voucher to the clerk's office for payment from the Attorney Admission Fund. An Assigned Counsel Voucher will be sent to counsel shortly after entry of judgment. Forms and instructions are also available on the court's web site, [www.ca4.uscourts.gov](http://www.ca4.uscourts.gov), or from the clerk's office.

**BILL OF COSTS:** A party to whom costs are allowable, who desires taxation of costs, shall file a Bill of Costs within 14 calendar days of entry of judgment. (FRAP 39, Loc. R. 39(b)).

Exhibit - D-3

**PETITION FOR REHEARING AND PETITION FOR REHEARING EN**

**BANC:** A petition for rehearing must be filed within 14 calendar days after entry of judgment, except that in civil cases in which the United States or its officer or agency is a party, the petition must be filed within 45 days after entry of judgment. A petition for rehearing en banc must be filed within the same time limits and in the same document as the petition for rehearing and must be clearly identified in the title. The only grounds for an extension of time to file a petition for rehearing are the death or serious illness of counsel or a family member (or of a party or family member in pro se cases) or an extraordinary circumstance wholly beyond the control of counsel or a party proceeding without counsel.

Each case number to which the petition applies must be listed on the petition and included in the docket entry to identify the cases to which the petition applies. A timely filed petition for rehearing or petition for rehearing en banc stays the mandate and tolls the running of time for filing a petition for writ of certiorari. In consolidated criminal appeals, the filing of a petition for rehearing does not stay the mandate as to co-defendants not joining in the petition for rehearing. In consolidated civil appeals arising from the same civil action, the court's mandate will issue at the same time in all appeals.

A petition for rehearing must contain an introduction stating that, in counsel's judgment, one or more of the following situations exist: (1) a material factual or legal matter was overlooked; (2) a change in the law occurred after submission of the case and was overlooked; (3) the opinion conflicts with a decision of the U.S. Supreme Court, this court, or another court of appeals, and the conflict was not addressed; or (4) the case involves one or more questions of exceptional importance. A petition for rehearing, with or without a petition for rehearing en banc, may not exceed 3900 words if prepared by computer and may not exceed 15 pages if handwritten or prepared on a typewriter. Copies are not required unless requested by the court. (FRAP 35 & 40, Loc. R. 40(c)).

**MANDATE:** In original proceedings before this court, there is no mandate. Unless the court shortens or extends the time, in all other cases, the mandate issues 7 days after the expiration of the time for filing a petition for rehearing. A timely petition for rehearing, petition for rehearing en banc, or motion to stay the mandate will stay issuance of the mandate. If the petition or motion is denied, the mandate will issue 7 days later. A motion to stay the mandate will ordinarily be denied, unless the motion presents a substantial question or otherwise sets forth good or probable cause for a stay. (FRAP 41, Loc. R. 41).

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Exhibit-D-4

**U.S. COURT OF APPEAL FOR THE FOURTH CIRCUIT BILL OF COSTS FORM**  
(Civil Cases)

**Directions:** Under FRAP 39(a), the costs of appeal in a civil action are generally taxed against appellant if a judgment is affirmed or the appeal is dismissed. Costs are generally taxed against appellee if a judgment is reversed. If a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed as the court orders. A party who wants costs taxed must, within 14 days after entry of judgment, file an itemized and verified bill of costs, as follows:

- Itemize any fee paid for docketing the appeal. The fee for docketing a case in the court of appeals is \$500 (effective 12/1/2013). The \$5 fee for filing a notice of appeal is recoverable as a cost in the district court.
  - Itemize the costs (not to exceed \$.15 per page) for copying the necessary number of formal briefs and appendices. (Effective 10/1/2015, the court requires 1 copy when filed; 3 more copies when tentatively calendared; 0 copies for service unless brief/appendix is sealed.). The court bases the cost award on the page count of the electronic brief/appendix. Costs for briefs filed under an informal briefing order are not recoverable.
  - Cite the statutory authority for an award of costs if costs are sought for or against the United States. See 28 U.S.C. § 2412 (limiting costs to civil actions); 28 U.S.C. § 1915(f)(1) (prohibiting award of costs against the United States in cases proceeding without prepayment of fees).
- Any objections to the bill of costs must be filed within 14 days of service of the bill of costs. Costs are paid directly to the prevailing party or counsel, not to the clerk's office.

Case Number &amp; Caption: \_\_\_\_\_

Prevailing Party Requesting Taxation of Costs: \_\_\_\_\_

<b>Appellate Docketing Fee (prevailing appellants):</b>			<b>Amount Requested:</b> _____			<b>Amount Allowed:</b> _____	
Document	No. of Pages		No. of Copies		Page Cost (≤\$.15)	Total Cost	
	Requested	Allowed (court use only)	Requested	Allowed (court use only)		Requested	Allowed (court use only)
<b>TOTAL BILL OF COSTS:</b>						\$0.00	\$0.00

1. If copying was done commercially, I have attached itemized bills. If copying was done in-house, I certify that my standard billing amount is not less than \$.15 per copy or, if less, I have reduced the amount charged to the lesser rate.
2. If costs are sought for or against the United States, I further certify that 28 U.S.C. § 2412 permits an award of costs.
3. I declare under penalty of perjury that these costs are true and correct and were necessarily incurred in this action.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Certificate of Service**

I certify that on this date I served this document as follows:

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

Exhibit - E-1

No. 19-7360

TODD GLENN DEAN,

Plaintiff - Appellant,

v.

F. ENTZEL, Warden; CHAPLAIN MARIA; CHAPLAIN FUENTES;  
SUPERVISORY CHAPLAIN; UNKNOWN AGENTS,

Defendants - Appellees.

Appeal from the United States District Court for the Northern District of West Virginia, at  
Wheeling. Frederick P. Stamp, Jr., Senior District Judge. (5:19-cv-00014-FPS)

Submitted: May 19, 2020

Decided: May 21, 2020

Before NIEMEYER, HARRIS, and RICHARDSON, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Todd Glenn Dean, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

Exhibit - E-2

PER CURIAM:

Todd Glenn Dean appeals the district court's orders accepting the recommendation of the magistrate judge and dismissing without prejudice his complaint filed pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), for failure to exhaust administrative remedies, and denying reconsideration. On appeal, we confine our review to the issues raised in the informal brief. *See* 4th Cir. R. 34(b). Because Dean's informal brief does not challenge the basis for the district court's disposition, he has forfeited appellate review of the court's orders. *See Jackson v. Lightsey*, 775 F.3d 170, 177 (4th Cir. 2014) ("The informal brief is an important document; under Fourth Circuit rules, our review is limited to issues preserved in that brief."). Accordingly, we affirm the district court's judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

**AFFIRMED**

Exhibit - A-1-5

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF WEST VIRGINIA

TODD GLENN DEAN,

Plaintiff,

v.

Civil Action No. 5:19cv14  
(Judge Stamp)

F. ENTZEL, Warden;  
CHAPLAIN MARIA;  
CHAPLAIN FUENTES;  
CHAPLAIN SUPERVISORY CHAPLIN;  
UNKNOWN AGENT,

Defendants.

REPORT AND RECOMMENDATION

On February 7, 2019, the *pro se* plaintiff initiated this case by filing a civil rights complaint against the above-named defendants. In addition, the plaintiff filed a Motion for Leave to Proceed *in forma pauperis*. This case is before the undersigned for an initial review and report and recommendation.

I. The Complaint

In the complaint, Plaintiff alleges that he was discriminated against by the chaplain at FCI Hazelton because he is black. It appears that after a three-week tryout, he was hired permanently to be the clerk in the chaplain's library. The Plaintiff alleges that Chaplain Maria treated the white inmate clerk better than he. He further alleges that Chaplain Maria fired himself and a white inmate and <sup>error</sup> less than one week later gave the white inmate back his job. The Plaintiff alleges emotional distress because he suffers from sleeplessness, anxiety, marital problems, humiliation and loss of pay for being fired

Exhibit-A-2

ERROR

for no reason. For relief, he seeks \$1,000,000 in damages.

RELIEF REQUESTED \$ 100,000

## II. Exhaustion of Administrative Remedies

Under the Prison Litigation Reform Act (PLRA), a prisoner bringing an action with respect to prison conditions under 42 U.S.C. § 1983, or any other federal law, must first exhaust all available administrative remedies. 42 U.S.C. § 1997(e)(a). Exhaustion as provided in § 1997(e)(a) is mandatory. Booth v. Churner, 532 U.S. 731, 741 (2001). A Bivens action, like an action under 42 U.S.C. § 1983, is subject to the exhaust of administrative remedies. Porter v. Nussle, 534 U.S. 516, 524 (2002). The exhaustion of administrative remedies “applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes,”<sup>1</sup> and is required even when the relief sought is not available. Booth at 741. Because exhaustion is a prerequisite to suit, all available administrative remedies must be exhausted *prior to* filing a complaint in federal court. See Porter, 534 U.S. at 524 (citing Booth, 532 U.S. at 741) (emphasis added).

In Woodford v. Ngo, 548 U.S. 81, 84-85 (2006), the United States Supreme Court found that the PLRA’s exhaustion requirements serves three main purposes: (1) to “eliminate unwarranted federal court interference with the administration of prisons;” (2) to “afford corrections officials time and opportunity to address complaints internally before allowing the initiation of a federal case;” and (3) “to reduce the quantity and improve the quality of prisoner suits.” Therefore, the PLRA exhaustion requires full and proper exhaustion. Woodford, at 92-94. Full and proper exhaustion includes meeting all

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<sup>1</sup> Id.



Exhibit - A-3

the time and procedural requirements of the prison grievance system. Id. At 1101-02.

In addition, although generally, the exhaustion of administrative remedies should be raised by the defendant as an affirmative defense, the court is not foreclosed from dismissing a case *sua sponte* on exhaustion grounds. See Anderson v. XYZ Prison Health Services, 407 F.3d 674, 681 (4th Cir. 2005). If the failure to exhaust is apparent from the face of the complaint, the court has the authority under to 28 U.S.C. § 1915 to dismiss the case *sua sponte*. Id. at 682.

The Bureau of Prisons makes available to its inmates a three level administrative remedy process if informal resolution procedures fail to achieve sufficient results. See 28 C.F.R. § 542.10, et seq. This process is begun by filing a Request for Administrative Remedy at the institution where the inmate is incarcerated. If the inmate's complaint is denied at the institutional level, he may appeal that decision to the Regional Office for the geographic region in which the inmate's institution of confinement is located. For inmates confined at FCI Hazelton, those appeals are sent to the Mid-Atlantic Regional Director in Annapolis Junction, Maryland. If the Regional Office denies relief, the inmate can appeal to the Office of General Counsel via a Central Office Administrative Remedy Appeal. An inmate must fully complete each level of the process in order to properly exhaust his administrative remedies.

Here, the Plaintiff admits that he only filed a BP-9 because "the [prisoner] litigation reform act does not require an inmate to plead and demonstrate complete exhaustion of administrative alternatives to a law suit before filing suit. ECF. No. 1 at 4. Thus, the failure to exhaust is clear on the face of the complaint and the *sua sponte* dismissal of this action is appropriate. See Anderson, 407 F.3d at 682.

Exhibit - A-4

### III. RECOMMENDATION

In consideration of the foregoing, it is recommended that Plaintiff's complaint be **DISMISSED WITHOUT PREJUDICE for the failure to exhaust**. It is further recommended that the plaintiff's Motion for Leave to Proceed *in forma pauperis* [ECF No. 2] and Motion to Appoint Counsel [ECF No. 7] be **DENIED AS MOOT**.

The Plaintiff shall have fourteen days from the date of filing this Report and Recommendation within which to file with the Clerk of this Court, specific written objections, identifying the portions of the Report and Recommendation to which objection is made, and the basis of such objection. A copy of such objections should also be submitted to the United States District Judge. Objections shall not exceed ten (10) typewritten pages or twenty (20) handwritten pages, including exhibits, unless accompanied by a motion for leave to exceed the page limitations, consistent with LR PL P 12.

Failure to file written objections as set forth above shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United State v. Schronce, 727 F.2d 91 (4th Cir. 1984).

The Clerk is **DIRECTED** to send a copy of this Report and Recommendation to the *pro se* Plaintiff by certified mail, return receipt requested, to his last known address as shown on the docket. In addition, because this Report and Recommendation completes the referral from the District Court, the Clerk is **DIRECTED** to terminate the

Exhibit-A-5

Magistrate Judge association with this case.

IT IS SO ORDERED.

DATED: April 12, 2019

/s/ James P. Mazzone

JAMES P. MAZZONE  
UNITED STATES MAGISTRATE JUDGE

Exhibit-B-1

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

TODD GLENN DEAN,

Plaintiff,

v.

Civil Action No. 5:19CV14  
(STAMP)

F. ENTZEL, Warden,  
CHAPLAIN MARIA,  
CHAPLAIN FUENTES,  
CHAPLAIN SUPERVISORY CHAPLIN,  
and UNKNOWN AGENT,

Defendants.

**ORDER GRANTING AS FRAMED PLAINTIFF'S SECOND MOTION  
FOR AN EXTENSION OF TIME TO FILE OBJECTIONS  
TO MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION  
AND DENYING AS MOOT PLAINTIFF'S FIRST MOTION FOR  
AN EXTENSION OF TIME TO FILE OBJECTIONS TO  
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

On April 17, 2019, the plaintiff, Todd Glenn Dean, filed a motion for extension of time to file objections to the magistrate judge's report and recommendation. ECF No. 9. The plaintiff specifically requests that he be granted a 90-day extension to file any such objections. Id. at 1. In support of this motion, the plaintiff states that the prison in which is incarcerated "just came off a week[-]long lockdown . . . only to go right back on lockdown." Id.

Then, on July 1, 2019, the plaintiff filed a motion for an extension of time to file objections to the magistrate judge's report and recommendation. ECF No. 12. The plaintiff specifically requests that he be granted a 45-day extension to file any such objections. Id. at 1. In support of this motion, the plaintiff

Exhibit - B-2

states that the prison in which he is incarcerated has been on lockdown. Id. at 1.

For good cause shown, the plaintiff's motion for an extension of time (ECF No. 12) is hereby GRANTED AS FRAMED and plaintiff's earlier motion for extension of time (ECF No. 9) is DENIED AS MOOT. Accordingly, the plaintiff is ORDERED to file any objections to the magistrate judge's report and recommendation on or before August 14, 2019.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this order to the pro se plaintiff by certified mail and to counsel of record herein.

DATED: July 24, 2019

/s/ Frederick P. Stamp, Jr.  
FREDERICK P. STAMP, JR.  
UNITED STATES DISTRICT JUDGE

Exhibit-C-1-8

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

TODD GLENN DEAN,

Plaintiff,

v.

Civil Action No. 5:19CV14  
(STAMP)

F. ENTZEL, Warden,  
CHAPLAIN MARIA,  
CHAPLAIN FUENTES,  
CHAPLAIN SUPERVISORY CHAPLAIN,  
and UNKNOWN AGENT,

Defendants.

**MEMORANDUM OPINION AND ORDER**  
**AFFIRMING AND ADOPTING REPORT AND**  
**RECOMMENDATION OF MAGISTRATE JUDGE,**  
**OVERRULING PLAINTIFF'S OBJECTIONS**  
**AND DISMISSING CASE WITHOUT PREJUDICE**

I. Background

The pro se<sup>1</sup> plaintiff, Todd Glenn Dean, an inmate housed at FCI Hazelton, filed this civil action asserting a claim under Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971). ECF No. 1. In his complaint, the plaintiff alleges he was denied "equal protection by municipal entity or any other person acting under color of Federal Law." Id. at 3. Specifically, the plaintiff alleges that he was discriminated against because he is black. Id. at 7-8. The plaintiff claims that while working as a clerk in the chaplain's library, Chaplain Maria treated the white

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<sup>1</sup>"Pro se" describes a person who represents himself in a court proceeding without the assistance of a lawyer. Black's Law Dictionary 1416 (10th ed. 2014).

Exhibit-C-2

Error↓  
inmate clerk better than she treated him. Id. The plaintiff further alleges that Chaplain Maria fired him and the white inmate clerk over a disagreement, but then hired the white clerk back just Error↓  
one week later. Id. The plaintiff admitted that he did not exhaust his administrative remedies, stating that "the prisoners litigation reform act does not require an inmate to plead and demonstrate complete exhaustion of administrative alternatives to a law suit before filing suit." Id. at 4. The plaintiff seeks "damages for emotional distress because plaintiff suffers sleeplessness, anxiety, stress, marital problems, humiliation, and loss of pay for being fired for no reason." Id. at 9. For relief, the plaintiff Error↓  
seeks \$1,000,000.00 in damages.<sup>2</sup> Id.

On the same day, the plaintiff filed a motion for leave to proceed in forma pauperis (ECF No. 2) and he later filed a motion to appoint counsel (ECF No. 7).

Pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule of Prisoner Litigation 2, this case was referred to United States Magistrate Judge James P. Mazzone. The magistrate judge recommended that "Plaintiff's complaint be dismissed without prejudice for failure to exhaust." ECF No. 8 at 4. The magistrate judge further recommended that the plaintiff's motion for leave to

Error↓  
<sup>2</sup>The plaintiff seeks \$1,000,000.00 in damages in his original complaint (ECF No. 1), but appears to seek \$100,000.00 in later submissions to this Court (ECF Nos. 10 and 17). Original Damage

Exhibit-C-3

proceed in forma pauperis (ECF No. 2) and his motion to appoint counsel (ECF No. 7) be denied as moot. Id.

The plaintiff then filed a motion titled as "Motion for Objection and Subjection."<sup>3</sup> ECF No. 10. In that motion, the plaintiff states that he should have been granted in forma pauperis status. Id. at 1. The plaintiff asserts that he is entitled to a liberal construction of his pleading, and he then lists the injuries that have resulted due to the actions alleged in his complaint. Id. at 1-2. This motion also contained a request for further relief, in which the plaintiff requested "an injunction compelling defendants to provide or adopt a new policy or custom on misconduct and behavior and discrimination and retraining along with \$100,000 in compensatory money damages." Id. at 2. Additionally, the plaintiff contends that his claim was misunderstood in the report and recommendation and that "the complaint should have been read to raise Bivens claims and Federal Tort Claims Act (FTCA) claims." Id. The plaintiff further asserts that "[b]ecause the court may [have] ~~error~~ mistakenly dismissed [sic] plaintiff['s] claim base[d] on the (FTCA) administrative exhaustion and repleading a cognizable (FTCA) claim [he] should hereby be granted (90) days from the date of this order to file a[n] amended complaint alleging a cognizable Bivens Fourteenth Amendment of

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<sup>3</sup>This Court construes the assertions in plaintiff's "Motion for Objection and Subjection" (ECF No. 10) as objections to the magistrate judge's report and recommendation (ECF No. 8).



Exhibit-C-4

deliberate indifference claim and that he be allowed to exhaust [sic] the rest of his administrative remedies under 28 § 2675(A) and [to] notify the Court that he has begun the second part of the administrative remedy." Id. at 3.

The plaintiff then filed what is docketed as an amended complaint. ECF No. 11. In that document, the plaintiff asks the Court "to stop any kind of already retaliation that [he] may be facing. [He is] in great fear of being transfer[red] from [ ] Hazelton[, ] [j]ust because of [the] administrative remedy appeal and the law-suit that [he] filed." Id. at 1-2. He indicates that he has a "medical hold" that prevents him from being transferred. Id. at 2. The plaintiff also asks this Court to ensure he remains at NOW IN U.S.P. THOMSON FCI Hazelton in order to stay close to his family in Pittsburgh. Id. at 1.

The plaintiff has also filed two motions for an extension of time to file a response to the magistrate judge's report and recommendation. ECF Nos. 9 and 12. This Court then granted as framed the plaintiff's second motion for an extension of time to file objections to the magistrate judge's report and recommendation and denied as moot plaintiff's first motion for an extension of time to file objections to the magistrate judge's report and recommendation. ECF No. 13. Specifically, this Court ordered the plaintiff to file any objections on or before August 14, 2019. Id. at 2.

Exhibit-C-5

The plaintiff then filed what is titled as a "Motion for Objection."<sup>4</sup> ECF No. 17. In that motion, the plaintiff reiterates many of the same assertions made in his "Motion for Objection and Subjection" (ECF No. 10). In this motion he requests that this Court "allow this case to move forward, because the staff [ ] at F.C.I. Hazelton will not provide [him] with [ ] (memo) as it's been stated in [his] rejection notices from (central office) that would clearly be Fact admitting the wrong, it also state that [he] should re-submit it back to the level of the original rejection, which would be back to the regional appeal on the (B-P-10) See Exhibit # B-2 [ ] of the rejection form, and now the same reason's of rejection from (central office), as well this is just a run-round or a delayed and denial tacked because staff will not give or provide [him] with such (memo). . . ." Id. at 2.

For the reasons that follow, this Court finds that the report and recommendation of the magistrate judge (ECF No. 8) should be adopted in its entirety.

II. Applicable Law

Under 28 U.S.C. § 636(b)(1)(C), this Court must conduct a de novo review of any portion of the magistrate judge's recommendation to which an objection is timely made. Because the plaintiff filed

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<sup>4</sup>Like the assertions in the plaintiff's "Motion for Objection and Subjection" (ECF No. 10), this Court construes the plaintiff's assertions in his "Motion for Objection" (ECF No. 17) as additional objections to the magistrate judge's report and recommendation (ECF No. 8).

Exhibit-C-6

objections to the report and recommendation, the magistrate judge's recommendation will be reviewed de novo as to those findings to which the plaintiff objected. As to those findings to which objections were not filed, all findings and recommendations will be upheld unless they are "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A).

III. Discussion

In reviewing the record, the report and recommendation, and the plaintiff's objections, this Court finds that the objections are without merit.

In the report and recommendation, the magistrate judge correctly determined that the plaintiff had not exhausted his administrative remedies, a requirement for a prisoner to file suit. Id. at 5. The magistrate judge concluded that "the failure to exhaust is clear on the face of the complaint and the sua sponte dismissal of this action is appropriate." Id. at 6.

As to the plaintiff's general requests for "an injunction compelling defendants to provide or adopt a new policy or custom on misconduct and behavior and discrimination and retraining along with \$100,000 in compensatory money damages" (ECF No. 10 at 2; ECF No. 17 at 2), this Court finds that because the plaintiff has failed to exhaust his remedies, it is premature to consider granting such relief. Moreover, this Court further finds that it is premature to consider the plaintiff's request for this Court "to

Exhibit-C-7

stop any kind of retaliation that [he] may be facing." (ECF No. 11 at 1-2). As stated above, the plaintiff must first exhaust his remedies. Further, there is no evidence that the plaintiff has been transferred to another location. Indeed, in the plaintiff's recent filing (ECF No. 17), his assertions relate to actions allegedly taken at FCI Hazelton. See ECF No. 17 at 2. Now U.S.P.

After conducting an appropriate de novo review of the plaintiff's objections to the report and recommendation, this Court upholds the magistrate judge's report and recommendation and overrules the plaintiff's objections..

IV. Conclusion

For the reasons discussed above, the report and recommendation of the magistrate judge (ECF No. 8) is hereby ~~Error~~ AFFIRMED and ADOPTED in its entirety. Accordingly, the plaintiff's complaint (ECF No. 1) is DISMISSED WITHOUT PREJUDICE, and the motions to proceed in forma pauperis (ECF No. 2) and motion to appoint counsel (ECF No. 7) are DENIED AS MOOT. Plaintiff's objections (ECF Nos. 10 and 17) are OVERRULED. Moreover, the plaintiff's amended complaint (ECF No. 11) is DISMISSED WITHOUT PREJUDICE.

It is further ORDERED that this case be DISMISSED WITHOUT PREJUDICE and STRICKEN from the active docket of this Court.

Should the plaintiff choose to appeal the judgment of this Court to the United States Court of Appeals for the Fourth Circuit on the issues to which objection was made, he is ADVISED that he

Exhibit-C-8

must file a notice of appeal with the Clerk of this Court within 60 days after the date of the entry of this order.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to counsel of record herein and to the pro se plaintiff by certified mail. Pursuant to Federal Rule of Civil Procedure 58, the Clerk is DIRECTED to enter judgment on this matter.

DATED: August 15, 2019

/s/ Frederick P. Stamp, Jr.  
FREDERICK P. STAMP, JR.  
UNITED STATES DISTRICT JUDGE

FILED: July 28, 2020

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 19-7360  
(5:19-cv-00014-FPS)

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TODD GLENN DEAN

Plaintiff - Appellant

v.

F. ENTZEL, Warden; CHAPLAIN MARIA; CHAPLAIN FUENTES;  
SUPERVISORY CHAPLAIN; UNKNOWN AGENTS

Defendants - Appellees

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O R D E R

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The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Niemeyer, Judge Harris, and Judge Richardson.

For the Court

/s/ Patricia S. Connor, Clerk

**Additional material  
from this filing is  
available in the  
Clerk's Office.**