

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

MICHAEL R. GOODWIN, )  
 )  
 Plaintiff, )  
 )  
 v. ) 1:12-cv-00371-JCN  
 )  
 LOREEN MALONEY and )  
 RHONDA WALTERS, )  
 )  
 Defendants )

**MEMORANDUM OF DECISION<sup>1</sup>**

In this action, Plaintiff Michael R. Goodwin contends that Defendants Loreen Maloney and Rhonda Walters acted with deliberate indifference regarding his serious medical needs while he was a pretrial detainee at the Somerset County Jail.

Defendants Loreen Maloney and Rhonda Walters moved for summary judgment citing in part Plaintiff's alleged failure to exhaust his administrative remedies as required by the Prison Litigation Reform Act.<sup>2</sup> (ECF No. 73.) The Court determined that the record included disputed factual issues as to whether Plaintiff exhausted his administrative remedies. The Court, therefore, denied the motion for summary judgment. (ECF No. 84.)

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<sup>1</sup> The parties have filed a consent authorizing the undersigned to conduct any and all proceedings and to enter a final order and judgment in this matter.

<sup>2</sup> The Prison Litigation Reform Act, 42 U.S.C. § 1997e(a), provides: "No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Because the Court concluded that disputed factual issues precluded the entry of summary judgment, the Court scheduled an evidentiary hearing to determine whether Plaintiff properly exhausted his administrative remedies.<sup>3</sup>

### FINDINGS OF FACT

After consideration of the evidence, I find the following facts:<sup>4</sup>

1. From January 29, 2010, through February 5, 2010, Plaintiff was an inmate at the Somerset County Jail. Plaintiff was transferred to the Maine Correctional Center on February 5, 2010.

2. For the time during which Plaintiff was an inmate, the Somerset County Jail maintained a written policy that governed inmate grievances (the grievance policy).

3. The grievance policy is explained in the Somerset County Jail Handbook that is provided to each inmate.

4. Plaintiff acknowledged receipt of a copy of the handbook on January 31, 2010. Plaintiff also acknowledged receipt of the handbook on two other occasions when he was incarcerated at the Somerset County Jail in 2009.

5. Plaintiff filed a grievance in 2009 on a matter that is unrelated to the subject matter of this action. Personnel at the Somerset County Jail responded to the grievance the day after Plaintiff filed the grievance.

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<sup>3</sup> See *Albino v. Baca*, 747 F.3d 1162, 1170-71 (9th Cir. 2014) (en banc) (“If a motion for summary judgment is denied, disputed factual questions relevant to exhaustion should be decided by the judge, in the same manner a judge rather than a jury decides disputed factual questions relevant to jurisdiction and venue.”), *cert. denied*, 135 S. Ct. 403 (2014); *Messa v. Goord*, 652 F.3d 305, 310 (2d Cir. 2011) (“[T]he Seventh Amendment does not guarantee a jury trial on factual disputes regarding administrative exhaustion under the PLRA.”); *Dillon v. Rogers*, 596 F.3d 260, 272 (5th Cir. 2010) (“Since exhaustion is a threshold issue that courts must address to determine whether litigation is being conducted in the right forum at the right time, we conclude that judges may resolve factual disputes concerning exhaustion without the participation of a jury.”).

<sup>4</sup> The enumerated list of facts set forth in this section is not the entirety of the factual findings. Additional findings are made in the “Discussion” section that follows.

6. Plaintiff was aware of the grievance policy when he was an inmate in 2010. Plaintiff also knew that he had to exhaust the grievance procedure before he could commence a civil action based on any conduct that is properly the subject of a grievance.

7. Plaintiff asserts that he submitted a grievance form dated February 4, 2010. Plaintiff contends that in the grievance, he complained about the medical treatment that he received in January-February 2010. Plaintiff's complaint about the medical treatment is the subject of this action.

8. The Somerset County Jail maintains a log of each grievance that is filed by inmates. When a grievance is filed, the grievance is typically logged into the Jail's computer system the following day.

9. The Somerset County Jail has no record of Plaintiff filing a grievance in February 2010 or anytime thereafter regarding the subject matter of this action.

10. Medpro Associates, the medical provider at the Somerset County Jail, has no record of Plaintiff filing a grievance in February 2010 or anytime thereafter regarding the subject matter of this action.

11. Plaintiff asserts that on two occasions (February 11, 2010, and April 16, 2010), he wrote to Phillip Campbell, a corrections officer at the Somerset County Jail, to inquire about the status of his grievance.<sup>5</sup>

12. Mr. Campbell never received the letters.

13. The Somerset County Jail has no record of receiving the letters.

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<sup>5</sup> The letters are designated as trial exhibits 4 and 5.

14. In the letter dated February 11, 2010, Plaintiff asserts in part, “I filled out a grievance, dated 2/4/10 ...” On the original draft, Plaintiff identified the date as “2/4/12,” but changed the “12” to “10” and initialed the change.

#### **DISCUSSION**

Failure to exhaust under the Prison Litigation Reform Act (PLRA) is an affirmative defense that “must be raised and proved by the defense,” *Cruz–Berríos v. González–Rosario*, 630 F.3d 7, 11 (1st Cir. 2010), and is subject to proof by a preponderance of the evidence, *Palmer v. Flore*, 3 F. Supp. 3d 632, 637 (E.D. Mich. 2014). Defendants contend that the evidence establishes that contrary to Plaintiff’s assertion, Plaintiff did not file a grievance form and, therefore, Plaintiff has not exhausted the applicable administrative remedies. As explained below, the more credible and persuasive evidence convinces the Court that Plaintiff did not exhaust his administrative remedies as required prior to commencing this action.

Defendants have demonstrated (1) that the Somerset County Jail had an appropriate grievance procedure in place at the time of Plaintiff’s incarceration in 2010; (2) that Plaintiff was knowledgeable of the grievance procedure at the time of his incarceration at the Somerset County Jail in 2010; (3) that the Somerset County Jail typically logs each grievance form the day after it is filed; and (4) that the Somerset County Jail has no record of Plaintiff filing a grievance regarding the subject matter of this action.<sup>6</sup>

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<sup>6</sup> Defendant presented the log of grievances filed in February 2010, and the log does not include a grievance filed by Plaintiff.

Plaintiff maintains that on February 4, 2010, he gave a completed grievance form to a corrections officer.<sup>7</sup> Plaintiff cannot recall the name of the corrections officer. Plaintiff asserts that he received no response to the filing of his grievance.

In support of his contention that he filed a grievance form, Plaintiff relies primarily on two letters that he purportedly sent to Phillip Campbell, a lieutenant at the Somerset County Jail. Plaintiff argues that the letters in which Plaintiff inquires about the status of the grievance that he filed, which letters Plaintiff allegedly wrote in 2010, demonstrate that he in fact commenced the grievance procedure.

Significantly, neither Mr. Campbell, nor the Somerset County Jail, has a record of receiving the letters. Furthermore, Plaintiff's initial reference in the letter dated February 11, 2010, that he filed the grievance in 2012 is revealing. Common sense and logic suggest little likelihood that a person would inadvertently reference a date two years in the future. Particularly given that Plaintiff filed this action in 2012, a more likely and logical explanation for Plaintiff initially writing the date of the filing of the grievance as "2/4/12" (emphasis supplied) is that he composed the letter in 2012 when he was preparing to file suit and he realized that he had not exhausted the administrative procedure.<sup>8</sup> In other words, a reasonable inference from the evidence is that Plaintiff wrote the letters as part of an attempt to construct a plausible argument that he filed a grievance in 2010

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<sup>7</sup> Plaintiff argues in part that Defendants cannot prevail on their exhaustion defense because it is unclear whether Medpro's policy or the Somerset County Jail policy applied. Regardless of whether the policies differ in any material way, Plaintiff's argument fails. First, in response to the lack of any record of the jail's receipt of a grievance, Plaintiff does not assert that he satisfied his obligation to exhaust through the filing of a grievance with Medpro. In this case, Plaintiff contends that he complied with the policy of the Somerset County Jail. The issue thus is not whether Plaintiff complied with the requirements of Medpro's policy. Second, Plaintiff did not testify that he failed to file a grievance or that he did not file the proper grievance form because he was confused as to which policy applied. Instead, he maintains that he was aware of the jail's policy and that he complied with it by filing the initial grievance form. The issue, therefore, is whether Plaintiff exhausted the administrative procedure provided by the jail's grievance policy.

<sup>8</sup> The fact that Plaintiff dated the complaint in this matter on "12/4/12," which is similar numerically to "2/4/12," is consistent with this conclusion.

when he in fact did not file a grievance. In short, Plaintiff's testimony that that he filed the grievance is not credible.

While no system is infallible, the most credible and persuasive evidence establishes that the lack of any record in the jail of Plaintiff filing a grievance is not the result of a system failure at the Somerset County Jail.<sup>9</sup> Rather, the most likely reason that the Somerset County Jail has no record of a grievance is that Plaintiff did not file the grievance.<sup>10</sup> Defendant, therefore, has established by a preponderance of evidence that Plaintiff did not exhaust his administrative remedy before commencing this action. Accordingly, the Court dismisses Plaintiff's claims against Defendants Maloney and Walters.<sup>11</sup>

/s/ John C. Nivison  
U.S. Magistrate Judge

Dated this 19<sup>th</sup> day of December, 2014.

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<sup>9</sup> Plaintiff's argument requires the Court to conclude that the Somerset County Jail not only mishandled or lost the grievance that Plaintiff filed, but that the jail and/or Lieutenant Campbell mishandled or lost the two letters that Plaintiff maintains he forwarded to Lieutenant Campbell. While the mishandling of three documents filed by the same person on three separate days is theoretically possible, it is not likely.

<sup>10</sup> Plaintiff argues that Defendants have failed to demonstrate that Plaintiff did not exhaust because questions remain about the availability of administrative remedies and the number of steps in the grievance process, such as what an inmate must do if there is no response to his step one grievance, whether the third step is mandatory, and whether an inmate can invoke the third step (a complaint to the Maine Department of Corrections) without completing the first two steps. Plaintiff's argument is unpersuasive. Defendants have presented evidence (e.g., no record of the filing of a grievance) to support their contention that Plaintiff did not even file a step one grievance. In response to that evidence, Plaintiff does not assert that he filed a complaint with the Department of Corrections, or that he was confused as to whom the step one grievance should be directed. He testified that he filed a grievance with the Somerset County Jail. The principal issue in dispute in this case is whether Plaintiff made the initial filing. The number of steps in the process, and to whom subsequent filings must be made, are not pertinent to the resolution of the exhaustion issue where, as the Court finds in this case, Plaintiff failed to file the step one grievance.

<sup>11</sup> In the PLRA context, dismissal without prejudice is the proper disposition when the Court concludes that the defendant has carried its burden of demonstrating that the plaintiff failed to exhaust administrative remedies, even if exhaustion is impossible when the dismissal enters. *Fluker v. County of Kankakee*, 741 F.3d 787, 791–92 (7th Cir. 2013); *Boyd v. Corrections Corp. of America*, 380 F.3d 989, 994 (6th Cir. 2006); *Wyatt v. Terhune*, 315 F.3d 1108, 1120 (9th Cir. 2003), *overruled on other grounds*, *Albino v. Baca*, 747 F.3d 1162, 1168-69 (9th Cir. 2014).

GOODWIN v. MEDPRO, et al.  
Assigned to: MAGISTRATE JUDGE JOHN C.  
NIVISON  
related Case: [1:12-cv-00129-JAW](#)  
Cause: 42:1983 Prisoner Civil Rights

Date Filed: 12/07/2012  
Jury Demand: Both  
Nature of Suit: 550 Prisoner: Civil  
Rights  
Jurisdiction: Federal Question

**Plaintiff**

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V.

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**Defendant**

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