

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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JOHNSON W. GREYBUFFALO #229871,

Plaintiff,

v.

DANIEL BERTRAND,  
MICHAEL BAENEN and  
ROBERT NOVITSKI, individually  
and in their official capacities,

Defendants.  
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ORDER

03-C-559-C

Plaintiff Johnson Greybuffalo is proceeding on the following four claims: (1) defendant Robert Novitski denied his request to purchase medicinal herbs for smudging, in violation of the free exercise clause of the First Amendment and the Religious Land Use and Institutionalized Persons Act; (2) defendant Novitski denied his request to allow the Native American drum singers to have practice time, in violation of the First Amendment and the Religious Land Use and Institutionalized Persons Act; (3) defendant Michael Baenen denied his request to allot more time for the Native American pipe and drum ceremony and Native American study group, in violation of the free exercise clause of the First Amendment; and

(4) defendant Bertrand denied his proposal for a religious group for Native American inmates, in violation of the free exercise clause of the First Amendment and the Religious Land Use and Institutionalized Persons Act.

Defendants have moved to dismiss the first three of these claims for plaintiff's failure to exhaust his administrative remedies. The deadline for plaintiff's response to defendants' motion was August 3, 2004, but plaintiff has neither filed a response nor requested an extension of the deadline. I construe plaintiff's silence as a concession that he has not exhausted his administrative remedies with respect to these three claims, as he was required to do under 42 U.S.C. § 1997e(a). Accordingly, I will dismiss these claims without prejudice to his refiling them after he has exhausted his administrative remedies. Ford v. Johnson, 362 F.3d 395, 401 (7th Cir. 2004) (dismissal for failure to exhaust administrative remedies should be without prejudice).

## ORDER

IT IS ORDERED that

1. The motion to dismiss filed by defendants Daniel Bertand, Robert Novitski and Michael Baenen is GRANTED. The following claims are DISMISSED without prejudice for plaintiff Johnson Greybuffalo's failure to exhaust his administrative remedies:

(1) Defendant Novitski denied his request to purchase medicinal herbs for smudging,

in violation of the free exercise clause of the First Amendment and the Religious Land Use and Institutionalized Persons Act;

(2) Defendant Novitski denied his request to allow the Native American drum singers to have practice time, in violation of the First Amendment and the Religious Land Use and Institutionalized Persons Act;

(3) Defendant Baenen denied his request to allot more time for the Native American pipe and drum ceremony and Native American study group, in violation of the free exercise clause of the First Amendment.

2. Because plaintiff has no remaining claims against defendants Baenen and Novitski, these defendants are DISMISSED from this case.

Entered this 16th day of August, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge