

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

WALLACE A. GARDNER
ADC # 110784

PLAINTIFF

v.

No. 5:11-cv-96-DPM-JJV

**OUTLAW, Assistant Warden, Maximum
Security Unit, ADC; STRAUGHN, Warden,
Maximum Security Unit, ADC; PAMELA C.
CONNER, Administrative Specialist,
Maximum Security Unit, ADC; and
MARVIN EVANS, JR., Deputy Director, ADC**

DEFENDANTS

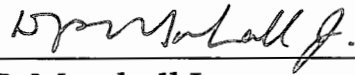
ORDER

The Court has considered Magistrate Judge Volpe's Proposed Findings and Recommendations, *Document No. 62*, and Gardner's objections. Review is *de novo*. FED. R. CIV. P. 72(b)(3). The Court agrees with, and adopts, Judge Volpe's analysis about exhaustion and respondeat superior. While the Court appreciates Judge Volpe's thoroughness in considering the merits, that analysis is unnecessary to decide the case.

The Court grants the Defendants' motion for summary judgment, *Document No. 56*. Gardner's complaint is dismissed without prejudice as to

Outlaw, Conner, and Evans for failure to exhaust administrative remedies. Gardner's respondeat-superior claims against Straughn fail as a matter of law, and are therefore dismissed with prejudice. The Court certifies that an *in forma pauperis* appeal taken from this Order and Judgment dismissing this action would be frivolous and not in good faith.

So Ordered.



D.P. Marshall Jr.
United States District Judge

12 October 2012