

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

BERRY MORROW,
ADC #143825

PLAINTIFF

V.

5:13CV0098 SWW/JTR

DAVID KELLEY, Lieutenant,
Cummins Unit, ADC, et al.

DEFENDANTS

ORDER

The Court has reviewed the Proposed Findings and Recommended Partial Disposition submitted by United States Magistrate Judge J. Thomas Ray. No objections have been filed. After careful review, the Court concludes that the Proposed Findings and Recommended Partial Disposition should be, and hereby are, approved and adopted in their entirety as this Court's findings in all respects.

IT IS THEREFORE ORDERED that:

1. Defendants' Motion for Summary Judgment (Doc. 32) is GRANTED IN PART and DENIED IN PART.
2. Plaintiff's failure to protect, retaliation, and corrective inaction claims against Defendants Boykin, Reed, Holstead, Ashcraft, Carter, Burgess, Kelley, May, and Lay are DISMISSED WITHOUT PREJUDICE due to a lack of exhaustion.
3. Plaintiff may PROCEED with his excessive force claim against Defendant Kelley and his free exercise of religion claim against Defendants Holstead,

Carter, and Railford, those claims having been exhausted.¹

4. The Court CERTIFIES, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal from this Order would not be taken in good faith.

Dated this 11th day of December 2013.

/s/Susan Webber Wright
UNITED STATES DISTRICT JUDGE

¹ This, of course, is not a denial of summary judgment on the merits of Plaintiff's excessive force claim against Defendant Kelley and his free exercise of religion claim against Defendants Holstead, Carter, and Railford.