

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

ERIC L WALKER,
Plaintiff,

vs.

Case No.: 3:21cv00888/LAC/ZCB

SGT RYAN DAY, et al.,
Defendants.

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ORDER

The magistrate judge issued a Report and Recommendation on January 22, 2024. (Doc. 64). The Court furnished the parties a copy of the Report and Recommendation and afforded an opportunity to file objections pursuant to Title 28, United States Code, Section 636(b)(1). I have made a *de novo* determination of all timely filed objections.

Having considered the Report and Recommendation, and any timely filed objections thereto, I have determined the Report and Recommendation should be adopted.

Accordingly, it is **ORDERED**:

1. The magistrate judge's Report and Recommendation (Doc. 64) is adopted and incorporated by reference in this order.

2. Defendants' motion to dismiss for failure to exhaust administrative remedies (Doc. 56) is **GRANTED in part as to the deliberate indifference claim against Defendant Lowe and DENIED in part as to the claims against the other Defendants.**

3. Defendants' motion for summary judgment (Doc. 56) is **DENIED in part as to Plaintiff's Eighth Amendment excessive force claim involving Defendant Danio's use of chemical agent spray; GRANTED in part as to Plaintiff's Eighth Amendment excessive force claim against Defendants Day, Cook, Danio, and Robinson for taking Plaintiff down inside and outside of the C-dormitory; and GRANTED in part as to Plaintiff's state law gross negligence claim against Defendant Day.**

4. This case is recommitted to the magistrate judge for further proceedings on the remaining claim.

DONE and ORDERED on this 27th day of March, 2024.

s/L.A. Collier

Lacey A. Collier
Senior United States District Judge