

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

GERNARD CHESTNUT,

Plaintiff,

v.

CASE NO. 4:11-cv-00225-MP-CAS

CAPTAIN KIMBERLY PETERSEN, et al.,

Defendants.

ORDER

This cause comes on for consideration upon the Magistrate Judge's Report and Recommendation dated November 16, 2012. (Doc. 56). The parties have been furnished a copy of the Report and Recommendation and have been 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 any timely filed objections.

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

Accordingly, it is hereby **ORDERED AND ADJUDGED:**

1. The magistrate judge's Report and Recommendation is adopted and incorporated by reference in this order.
2. Defendants' motion to dismiss (doc. 48) is GRANTED.
3. The following five claims against Defendants Gilmore, Hoffman, Mitchell, Brown, Carrouth, Parramore, and Richter are DISMISSED because plaintiff failed to exhaust administrative remedies pursuant to § 1997(e): (1) in June 2010, Defendants Gilmore and Hoffman used excessive force assaulted Plaintiff; (2) on June 9, 2010, Defendant Mitchell failed to intervene when Defendant Gilmore assaulted Plaintiff; (3) on June 15, 2010, Defendant Mitchell retaliated against Plaintiff; (4) on May 5, 2011, Defendants Brown and Carrouth retaliated against Plaintiff; and (5) on May 6, 2011, Defendants Parramore and Richter used

excessive force on Plaintiff.

4. Defendants Hoffman, Mitchell, Brown, Carrouth, Parramore, and Richter are DISMISSED from this action and this case is REMANDED for further proceedings on the surviving claims against defendant Petersen concerning the June 15, 2010 and May 5, 2011, incidents, and plaintiff's claim against defendant Gilmore for the use of force on June 9, 2010.

DONE AND ORDERED this 28th day of February, 2013

s/Maurice M. Paul
Maurice M. Paul, Senior District Judge