

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

JIMMIE SAPP,

Plaintiff,

v.

CASE NO. 4:12cv137-SPM/CAS

JONATHAN COLLINS,
and SERGEANT LEWIS,

Defendants.

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ORDER

THIS CAUSE comes before the Court for consideration of the magistrate judge's report and recommendation (doc.20) dated October 15, 2012.

Defendants filed an objection (doc 21) pursuant to Title 28, United States Code, Section 636(b)(1) and Federal Rule of Civil Procedure 72. Upon review, I have determined that the report and recommendation should be adopted.

The report and recommendation contains a complete and accurate analysis of the evidence and argument presented to the magistrate judge regarding exhaustion of administrative remedies. This Court declines to consider the additional argument and the affidavits submitted by Defendants in their objection because they were not presented to the magistrate judge. See Williams

v. McNeil, 557 F.3d 1287, 1291-92 (11th Cir. 2009). Accordingly, it is hereby

ORDERED as follows:

1. The magistrate judge's report and recommendation (doc. 20) is ADOPTED and incorporated by reference in this order.

2. Defendants' motion to dismiss (doc. 18) is denied as the Defendants did not meet their burden to demonstrate that Plaintiff failed to exhaust administrative remedies.

3. This case is referred to the magistrate judge for further proceedings.

DONE AND ORDERED this 31st day of October, 2012.

s/ Stephan P. Mickle
Stephan P. Mickle
Senior United States District Judge