

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION**

**BRIAN CHARLES PIERRE
CONSTANT, III,**

Plaintiff,

v.

Case No. 5:20-cv-85-TKW-MJF

JEFFREY BROWN, et al.,

Defendants.

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ORDER

This case is before the Court based on the magistrate judge's Second Report and Recommendation (Doc. 35). No objections were filed. Upon due consideration of the Report and Recommendation and the case file, the Court agrees with the magistrate judge's determination that Defendants Brown and Land's motion to dismiss should be denied because they have not satisfied their burden of showing that an administrative remedy was "available"—as that term is used in §1997e(a) and as construed by the Supreme Court—to exhaust the choking incident that allegedly occurred at Holmes C.I. on October 21, 2019.

Accordingly, it is **ORDERED** that:

1. The magistrate judge's Second Report and Recommendation is adopted and incorporated by reference in this Order.

2. Defendants Brown and Land's motion to dismiss (Doc. 29) is **DENIED**.
3. This case is recommitted to the magistrate judge for further pretrial proceedings.

DONE and ORDERED this 10th day of January, 2022.

T. Kent Wetherell, II

T. KENT WETHERELL, II
UNITED STATES DISTRICT JUDGE