

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

SHAWN RANDALL BARNES, SR.,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 5:10-CV-426 (MTT)
)	
Sgt. BUTCH, et al.,)	
)	
Defendants.)	
)	

ORDER

Before the Court is the Recommendation of Magistrate Judge Charles H. Weigle. (Doc. 37). The Magistrate Judge recommends denying the Defendants' Motion for Summary Judgment (Doc. 30) because there are genuine issues of material fact related to the Plaintiff's excessive force claim. However, the Magistrate Judge ultimately recommends the case be dismissed because the Defendants have shown the Plaintiff did not exhaust his administrative remedies prior to filing suit.

Neither the Plaintiff nor the Defendants objected to the Recommendation.¹ The Court has reviewed the Recommendation, which is adopted and made the Order of this

¹ It is possible the Defendant is unaware the Recommendation was filed. The Court mailed a copy of the Recommendation to the Defendant, but the mailing was subsequently returned to the Court March 7, 2013 as undeliverable because the Plaintiff had been transferred to a different prison. (Doc. 38). Significantly, the Court has previously instructed the Plaintiff that it is *his* duty, on penalty of dismissal, to report any address change to the Court. (Doc. 6 at 7) (The Plaintiff "shall at all times keep the clerk of this court ... advised of [his] current address"). The Plaintiff is clearly aware of this duty because he notified the Court of a prior address change. (Doc. 27). Moreover, it has been nearly a year since the Defendants' filed their summary judgment motion. Therefore, the Court enters this Order without reservation.

Nevertheless, the Court has of its own accord located the Plaintiff's new address, and on March 11, 2013 the Court mailed a copy of the Recommendation to him. If the Plaintiff moves

Court. The Defendants' Motion for Summary Judgment is **DENIED**. However, the case is **DISMISSED without prejudice** because the Plaintiff failed to exhaust his administrative remedies.

SO ORDERED, this 13th day of March, 2013.

S/ Marc T. Treadwell
MARC T. TREADWELL, JUDGE
UNITED STATES DISTRICT COURT

for reconsideration of this Order, the Court at that time will entertain any arguments the Plaintiff could have otherwise made had he filed an Objection.