

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ERIC D. SMITH,)	
<i>Plaintiff,</i>)	
)	
v.)	1:10-cv-00256-JMS-MJD
)	
JENNIFER SMITH and)	
DAPHNE TESTER,)	
<i>Defendants.</i>)	

ORDER ADOPTING REPORT AND RECOMMENDATION

on

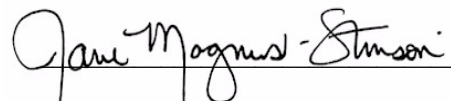
**Plaintiff's Objection and Motion to Strike [dkt. 121] and
Plaintiff's Motion For Judgment As A Matter of Law [dkt. 122]**

No objections having been filed thereto, the Magistrate Judge's Report and Recommendation [dkt. 125] on the issue of exhaustion is hereby adopted as the decision and Entry of the Court. The Defendants have failed to meet their burden of establishing that Mr. Smith failed to exhaust, and such affirmative defense is stricken.

The Court further adopts the Magistrate Judge's Recommendation as to *Plaintiff's Objection and Motion to Strike Defendant's Witness Mike Smith As a Witness [dkt. 121]* and *Plaintiff's Motion for Judgment As a Matter of Law [dkt 122]*, such that motions are **DENIED as moot.**

SO ORDERED.

11/08/2012



Hon. Jane Magnus-Stinson, Judge
United States District Court
Southern District of Indiana

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