

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

LARON FRANKLIN,

Plaintiff,

v.

MATT MACAULEY, et al.,

Defendants.

CASE NO. 1:22-cv-01005

HON. ROBERT J. JONKER

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**ORDER**

In this prisoner civil rights action filed under 42 U.S.C. § 1983, Plaintiff Franklin claims that Defendant Corrections Officers Nowicki and Schultz utilized excessive force against him in violation of his Eighth Amendment rights. (ECF No. 1, PageID.3). Defendant Schultz now moves for summary judgment on the basis of exhaustion. (ECF No. 21). On October 31, 2024, the Magistrate Judge issued a Report and Recommendation that the Court grant Defendant Schultz's motion. (ECF No. 31). The Magistrate Judge reasoned that there is no evidence that Plaintiff filed a grievance against Defendant Schultz for excessive force; Plaintiff's grievance report reflects only that Plaintiff filed grievances against Defendant Nowicki. (*Id.*, PageID.173).

Additionally, on October 31, 2024, the Magistrate Judge entered an order directing Plaintiff to show cause as to why Defendant Nowacki should not be dismissed based on the U.S. Marshals Service's inability to serve Defendant Nowacki with the information provided by Plaintiff, and Plaintiff's failure to provide follow-up information. (ECF No. 32). The Magistrate Judge expressly advised Plaintiff that if he did not demonstrate good cause by November 14, 2024, the Court would enter an order dismissing Defendant Nowacki. (*Id.*, PageID.176.)

The Court has carefully reviewed the Magistrate’s Report and Recommendation. No objections have been filed under 28 U.S.C. § 636(b)(1)(C). Furthermore, Plaintiff has not complied with the Court’s Order to Show Cause.<sup>1</sup>

**Accordingly,**

**IT IS ORDERED** that the Report and Recommendation of the Magistrate Judge, (ECF No. 31), is **APPROVED AND ADOPTED** as the opinion of the Court. Defendant Schultz’s Motion for Summary Judgment on the Basis of Exhaustion, (ECF No. 21), is **GRANTED**.

**IT IS FURTHER ORDERED** that Plaintiff’s claim against Defendant Schultz is **DISMISSED WITHOUT PREJUDICE** based on Plaintiff’s failure to exhaust his administrative remedies.

**IT IS FURTHER ORDERED** that Plaintiff’s claim against Defendant Nowicki is **DISMISSED WITHOUT PREJUDICE** based on Plaintiff’s failure to serve Defendant Nowicki in the time specified by FED. R. CIV. P. 4(m).

**IT IS SO ORDERED.**

Dated: November 25, 2024

/s/ Robert J. Jonker  
ROBERT J. JONKER  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> In fact, both the Report and Recommendation and Order to Show Cause were returned to the Court as undeliverable at the address given by Plaintiff, (ECF No. 33), suggesting that Plaintiff has abandoned the prosecution of this case altogether, *see* W.D. Mich. LCivR 41.1 (“Failure of a plaintiff to keep the court apprised of a current address shall be grounds for dismissal for want of prosecution.”).