

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

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|---------------------------|---|----------------------|
| ALEJANDRO HERRERA |) | 3:11-cv-0026-ECR-VPC |
| |) | |
| Plaintiff, |) | ORDER |
| |) | |
| vs. |) | |
| |) | |
| MICHAEL POEHLMAN, et al., |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

On April 15, 2011, the Magistrate Judge filed a Report and Recommendation (#5). No objections were timely filed to the Report and Recommendation.

IT IS, THEREFORE, HEREBY ORDERED that the Magistrate Judge's Report and Recommendation (#5) is well taken and is **APPROVED** and **ADOPTED**.

IT IS ORDERED that the filing fee shall be paid pursuant to 28 U.S.C § 1915 as amended by the Prisoner Litigation Reform Act of 1996.

IT IS FURTHER ORDERED that pursuant to 28 U.S.C. § 1915, as amended by the Prisoner Litigation Reform Act, the Nevada Department of Corrections shall pay the Clerk of the United States District Court, District of Nevada, 20% of the preceding month's deposits to plaintiff's account (in months that the account exceeds \$10.00), until the full \$350.00 has been paid for this action. The Clerk shall send a copy of this Order to Albert G. Peralta, Chief of Inmate Services, Nevada Department of Prisons, P.O. Box 7011, Carson City, NV 89702.

IT IS FURTHER ORDERED that the Clerk shall file the complaint (#1-1).

IT IS FURTHER ORDERED that the claims in Plaintiff's complaint (#1-1) are permitted to proceed:

- (1) Fourth Amendment illegal search against Defendant Daniels; and
- (2) Fourth Amendment excessive force against Defendant Daniels and Defendant John Doe #1, #2, #3, #4, #5, and #6.

IT IS FURTHER ORDERED that the claims in Plaintiff's complaint (#1-1) are **DISMISSED WITHOUT PREJUDICE** and **WITH LEAVE TO AMEND** according to the guidance provided in the Report and Recommendation:

(1) Fourth Amendment illegal arrest.

IT IS FURTHER ORDERED that Plaintiff's complaint (#1-1) be DISMISSED WITH PREJUDICE for the reasons articulated in the Report and Recommendation.

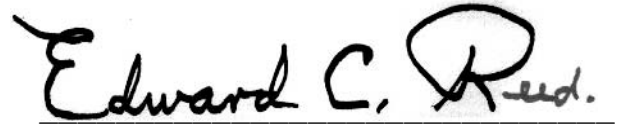
- (1) Official capacity suits against all defendants; and
- (2) Supervisory liability against Defendants Poehlman and Pitts.

IT IS FURTHER ORDERED that in accordance with the Report and Recommendation, Defendants Pohlman and Pitts be DISMISSED from this action.

IT IS FURTHER ORDERED that Plaintiff's motion for appointment of counsel (#3) is DENIED.

IT IS FURTHER ORDERED that Plaintiff shall have until August 22, 2011 to file an amended complaint.

DATED this 25th day of July 2011.


EDWARD C. REED
UNITED STATES DISTRICT JUDGE