

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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EVERTON BAILEY

Plaintiff,

v.

Civil Action No.  
9:09-cv-742 (GLS/DEP)

C.O. M. FORTIER,

Defendants.  
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APPEARANCES:

OF COUNSEL:

**FOR THE PLAINTIFF:**

EVERTON BAILEY  
Plaintiff, *Pro Se*  
60433066  
M.D.C. Brooklyn  
P.O. Box 329002  
Brooklyn, New York 11232

**FOR THE DEFENDANT:**

Hon. Richard S. Hartunian  
United States Attorney  
P.O. Box 7198  
100 South Clinton Street  
Syracuse, New York 13261-7168

CHARLES E. ROBERTS, ESQ.  
Assistant U.S. Attorney

GARY L. SHARPE,  
U.S. DISTRICT JUDGE

## **ORDER**

The above-captioned matter comes to this court following a Report-Recommendation by Magistrate Judge David E. Peebles, duly filed August 30, 2010. Following ten days from the service thereof, the Clerk has sent the file, including any and all objections filed by the parties herein.

No objections<sup>1</sup> having been filed, and the court having reviewed the Magistrate Judge's Amended Report-Recommendation for clear error, it is hereby

ORDERED, that the Report-Recommendation of Magistrate Judge David E. Peebles filed August 30, 2010 (Dkt. No. 19) is ACCEPTED in its entirety for the reasons state therein, and it is further

ORDERED, that defendants' motion to dismiss, or in the alternative for summary judgment (Dkt. No. 10) is DENIED, and that plaintiff's motion to amend his complaint (Dkt. No. 12) is DENIED; and it is further

ORDERED, that defendant's letter motion seeking limited discovery regarding the exhaustion issue (Dkt. No. 20) is hereby referred to the

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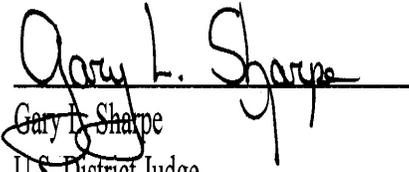
<sup>1</sup> On September 8, 2010, a letter was filed advising the court that the defendant will not be filing objections to the Magistrate's Report-Recommendation, however, the defendant has requested that the court order limited discovery regarding the exhaustion issue which will be followed by further motions. The court will refer the request to the underlying Magistrate Judge for his consideration.

Magistrate Judge for his review and consideration; and it is further

ORDERED, that the Clerk of the court serve a copy of this order upon the parties in accordance with this court's local rules.

IT IS SO ORDERED.

Dated: October 12, 2010  
Albany, New York

  
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Gary L. Sharpe  
U.S. District Judge