

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

EDWARD BARFIELD,	:	Case No. 1:15-CV-696
	:	
Plaintiff,	:	Judge Timothy S. Black
vs.	:	Magistrate Judge Karen L. Litkovitz
	:	
RON ERDOS, <i>et al.</i> ,	:	
	:	
Defendants.	:	

DECISION AND ENTRY:

- (1) ADOPTING THE REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE (Doc. 70);
(2) OVERRULING PLAINTIFF’S OBJECTIONS (Doc. 72); and
(3) TERMINATING THIS CASE FROM THE DOCKET**

This case is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Karen L. Litkovitz. Pursuant to such reference, the Magistrate Judge reviewed the pleadings and memoranda filed with this Court, and on February 6, 2017, submitted a Report and Recommendation. (Doc. 70). Plaintiff timely filed objections (“Objections”) (Doc. 72).¹

¹ At this point, Plaintiff has two claims remaining: (1) an excessive force claim and (2) a conditions of confinement claim. The Magistrate Judge recommended that both claims be dismissed because Plaintiff had not exhausted his administrative remedies, and in the alternative, that Defendants be granted judgment on the merits of the excessive force claim. The Objections do not allege a single error in the Magistrate Judge’s findings or analysis. Instead, the Objections argue that Plaintiff was subject to excessive force (Doc. 72 at 2-3) and exhausting administrative remedies should not be mandatory (*id.* at 5). Plaintiff already asserted these arguments—verbatim—in his opposition to Defendants’ motion for summary judgment (Doc. 66 at 2-4) and they fail for the reasons explained in the Report and Recommendation.

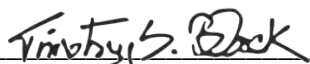
As required by 29 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has reviewed the comprehensive findings of the Magistrate Judge and considered *de novo* all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Report and Recommendation should be and is hereby adopted in its entirety and Plaintiff's Objections to the Report and Recommendation are overruled.

Accordingly:

1. The Report and Recommendation (Doc. 70) is **ADOPTED**;
2. Defendants' motion for summary judgment (Doc. 61) is **GRANTED**; and
3. Plaintiff's claims are **DISMISSED WITHOUT PREJUDICE** due to Plaintiff's failure to properly exhaust his administrative remedies;²
4. The Court certifies that pursuant to 28 U.S.C. Section 1915(a) an appeal of this Order would not be taken in good faith and therefore Plaintiff is denied leave to appeal *in forma pauperis*. However, Plaintiff remains free to apply to proceed *in forma pauperis* in the Court of Appeals; and
5. This case is **TERMINATED** on the docket of this Court.

IT IS SO ORDERED.

Date: 3/22/17



Timothy S. Black
United States District Judge

² This Court adopts the Magistrate Judge's initial recommendation that Plaintiff's claims fail because he did not exhaust his administrative remedies. Accordingly, the Court need not address the Magistrate Judge's alternative holding that Defendants are entitled to judgment on the merits of Plaintiff's excessive force claim.