

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

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| CARLOS CLARK, Plaintiff, | : | Case No. 1:16-cv-547 |
| | : | |
| | : | Judge Timothy S. Black |
| vs. | : | |
| | : | Magistrate Judge Karen L. Litkovitz |
| DANIEL BURKE, <i>et al.</i> , Defendant. | : | |
| | : | |

**DECISION AND ENTRY
ADOPTING THE REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE (Doc. 56) and
TERMINATING THIS CASE IN THIS COURT**

This case is before the Court pursuant to the Order of General Reference to United States Magistrate Judge Karen L. Litkovitz. Pursuant to such reference, the Magistrate Judge reviewed the pleadings filed with this Court and, on May 4, 2018, submitted a Report and Recommendation. (Doc. 56). Plaintiff filed an objection (“Objection”). (Doc. 57).¹

As required by 28 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

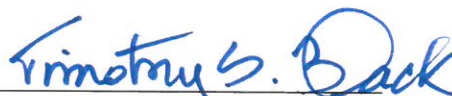
¹ Plaintiff’s Objection is not well-taken. The Objection argues that genuine issues of material fact exist as to whether Defendants Burke and Ewan used excessive force against Plaintiff in violation of the Eighth Amendment. (Doc. 57 at 1-2). However, the Objection offers no argument in response to the Magistrate Judge’s correct conclusion that summary judgment is appropriate because Plaintiff failed to exhaust his administrative remedies. (Doc. 56 at 5-9).

determine that such Report and Recommendation should be and is hereby adopted in its entirety. Accordingly:

1. The Report and Recommendation (Doc. 56) is **ADOPTED**;
2. Plaintiff's Objection (Doc.57) is **OVERRULED**;
3. Defendants' motion for summary judgment (Doc. 48) is **GRANTED** and Plaintiff's excessive force claim against Defendants Burke and Ewen in their individual capacities is **DISMISSED** without prejudice;
4. Plaintiff's "motion for relief" (Doc. 42) is **DENIED** as moot;
5. Plaintiff's motion for relief for mistake" (Doc. 47) is **DENIED** as moot;
6. Pursuant to 28 U.S.C. § 1915(a), an appeal of this Order would not be taken in good faith, and accordingly, Plaintiff is denied leave to appeal *in forma pauperis*; and
7. The Clerk shall enter judgment accordingly, whereupon this case is **TERMINATED** on the docket of this Court.

IT IS SO ORDERED.

Date: 6/6/18


Timothy S. Black
United States District Judge