

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

MELVIN FISHER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. CIV-12-0231-F
	)	
WARDEN FRED E. FIGUEROA (CCA),	)	
et al.,	)	
	)	
Defendants.	)	

**ORDER**

Magistrate Judge Robert E. Bacharach’s Report and Recommendation of January 7, 2013 (the Report) recommends summary judgment in favor of the defendants on the first and third claims of the complaint, based on the finding that plaintiff failed to exhaust his administrative remedies on those claims. (Defendants’ motion to dismiss was converted by the Magistrate Judge to a motion for summary judgment.) The Report recommends denial of the motion for summary judgment on the second claim, finding (after briefing as well as oral argument before the Magistrate Judge) that “the Plaintiff did not fail to exhaust administrative remedies available to him and the Court should deny summary judgment on the second claim.” Doc. no. 46, p. 11.

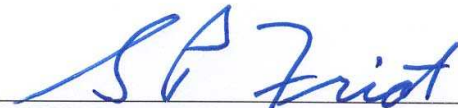
The second claim alleges that defendant Officer Johnson provided inadequate protection to the plaintiff during a riot. Defendant Johnson objected to the Report’s recommendation with respect to the second claim, arguing that plaintiff failed to exhaust his administrative remedies with respect to that claim. Doc. no. 47.

After review, including de novo review of all objected to matters, the court concludes that it agrees with the recommendations of the Magistrate Judge and that

no further analysis is necessary here. Defendant Johnson's objections to the Report are **DENIED**; the Report is **ACCEPTED, ADOPTED** and **AFFIRMED**; and, in conformity with the recommendation of the Magistrate Judge's Report, defendants' motion for summary judgment, doc. no. 15, is **GRANTED IN PART** and **DENIED IN PART**. Specifically, defendants are **GRANTED** summary judgment on the first and third claims alleged in this action, and defendants' motion for summary judgment is **DENIED** with respect to the second claim.

As a result, only the second claim remains for adjudication. A scheduling order will be entered in due course.

Dated this 22<sup>nd</sup> day of February, 2013.

  
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STEPHEN P. FRIOT  
UNITED STATES DISTRICT JUDGE