

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

James M. Branham,)	C/A: 1:11-1246-JFA-SVH
)	
Plaintiff,)	
vs.)	ORDER
)	
Sheriff Bruce M. Bryant, sued in his)	
individual capacity; John A. Clark,)	
)	
Defendants.)	

After the Magistrate Judge filed a Report and Recommendation suggesting that some, but not all, of the claims asserted in this action be dismissed, the defendants moved for leave to file an amended answer raising the failure of the plaintiff to exhaust administrative remedies as a bar to this action. Plaintiff, through newly-obtained counsel, opposes the motion to amend. Rule 15 of the Federal Rules of Civil Procedure provides that leave to amend shall be “freely granted when justice so requires.” In this case, the court will exercise its discretion and allow the amendment so that the threshold question of exhaustion of the plaintiff’s administrative remedies may be reviewed in this case.

Accordingly, the motion to amend (ECF No. 71) is granted, and this action is hereby remanded to the Magistrate Judge for further processing on the basis of the amended answer. The court declines to adopt the Report and Recommendation at this time in light of the filing of an amended answer. In addition, the defendants’ motion for summary judgment (ECF No. 33) is dismissed without prejudice.

IT IS SO ORDERED.

July 24, 2012
Columbia, South Carolina

A handwritten signature in black ink that reads "Joseph F. Anderson, Jr." in a cursive style.

Joseph F. Anderson, Jr.
United States District Judge