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**UNITED STATES DISTRICT COURT**

**EASTERN DISTRICT OF TEXAS**

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FLORENCIO HERNANDEZ,

Plaintiff,

*versus*

STATE OF TEXAS, *et al.*,

Defendants.

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CIVIL ACTION NO. 1:09-CV-55

**MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING THE  
MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION**

Plaintiff, Florencio Hernandez, an inmate formerly confined at the Mark Stiles Unit with the Texas Department of Criminal Justice, Correctional Institutions Division, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983 against Defendants Alton Alexander, Warden Joe Smith, Captain Felix Gordon, and Sergeant Milton Gilmore.

The Court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this Court. The Magistrate Judge recommends defendants’ motion for summary judgment be denied in part and granted in part. Specifically, the Magistrate Judge recommends defendants’ motion for summary judgment should be granted as to plaintiff’s claim for failure to investigate but should be denied as to plaintiff’s claim for failure to protect.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, and pleadings. Defendants filed objections to the Report and Recommendation of United States Magistrate Judge. This

requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b).

After careful consideration, the Court finds defendants' objections are without merit and that plaintiff has exhausted his administrative remedies as to his claim for failure to protect against Defendants Gilmore, Gordon and Smith. *See Johnson v. Johnson*, 385 F.3d 503, 522 (citing *Burton v. Jones*, 321 F.3d 569, 574 (6th Cir. 2003) (prisoners should be permitted to provide "additional factual detail" at the appellate stage of the grievance process)).

### **ORDER**

Accordingly, the objections of defendants are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge is **ADOPTED**.

SIGNED at Beaumont, Texas, this 26th day of March, 2013.



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MARCIA A. CRONE  
UNITED STATES DISTRICT JUDGE