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IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS TYLER DIVISION

ROBERTO PEREZ

v. § CIVIL ACTION NO. 6:08ev510

LARRY WOODARD, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE AND ENTERING FINAL JUDGMENT

The Plaintiff Roberto Perez, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged deprivations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

After review of the pleadings, the Magistrate Judge issued a Report on January 6, 2009, recommending that the lawsuit be dismissed without prejudice for failure to exhaust administrative remedies. The Magistrate Judge observed that Perez had answered "no" to a question on the standard Section 1983 lawsuit form asking if he had exhausted the grievance procedure, and that Perez had signed his lawsuit just four days after the last of the incidents complained of had occurred. The Magistrate Judge thus concluded that Perez's failure to exhaust was apparent from the face of the complaint and that the complaint was thus amenable to dismissal for this failure to exhaust.

A copy of the Magistrate Judge's Report was sent to Perez at his last known address, return receipt requested, but no objections have been received; accordingly, Perez is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal

conclusions accepted and adopted by the district court. <u>Douglass v. United Services Automobile</u> <u>Association</u>, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED without prejudice for failure to exhaust administrative remedies. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So ORDERED and SIGNED this 27th day of March, 2009.

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE