

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

RICHARD MICHAEL CUSTER,

Plaintiff

v.

//

CIVIL ACTION NO. 1:08CV93
(Judge Keeley)

OFFICER BUCKLEW,
OFFICER KESSLER,
1ST SGT. COLLINS and
OFFICER HELMS,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

On March 18, 2008, pro se plaintiff, Richard Michael Custer, ("Custer") filed a complaint pursuant to 42 U.S.C. § 1983. The Court referred this matter to United States Magistrate Judge James E. Seibert for initial screening and a Report and Recommendation ("R&R") in accordance with Local Rule of Prisoner Litigation 83.09.

On April 30, 2008, the Magistrate Judge recommended that the Potomac Highland Regional Jail and Mike Lawson, its administrator, be dismissed and that the claims against the remaining defendants, Officer Bucklew, Officer Kessler, 1st Sgt. Collins and Officer Helms, ("the remaining defendants") proceed. On June 17, 2008, this Court adopted the April 30, 2008, R&R and on June 18, 2008, the Clerk served summonses on the remaining defendants.

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On July 23, 2008, counsel for the remaining defendants filed a Motion to Dismiss or in the Alternative for Summary Judgment and on July 24, 2008, the Magistrate Judge entered a Roseboro Notice informing Custer of his right to respond. On August 5, 2008, Custer filed his response.

On September 19, 2008, Magistrate Judge Seibert issued an R&R recommending that this Court grant the defendants' motion and dismiss without prejudice Custer's complaint for failure to properly exhaust his administrative remedies. The R&R also specifically warned that failure to object to the R&R would result in the waiver of any appellate rights on this issue.

On September 24, 2008, the Court received a letter from Custer requesting an extension of time in which to file objections. On September 26, 2008, the Court filed the letter as a motion for extension of time, granted it and directed Custer to file any objections to the R&R by November 3, 2008. As of this date, the Court notes that Custer has failed to file any objections.¹

Consequently, the Court **ADOPTS** the Report and Recommendation in its entirety (dkt. no. 45), **GRANTS** the defendants' motion to

¹ Custer's failure to object to the Report and Recommendation not only waives his appellate rights in this matter, but also relieves the Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. Arn, 474 U.S. 140, 148-153 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).

ORDER ADOPTING REPORT AND RECOMMENDATION

dismiss (dkt. no. 34) and **DISMISSES** this case **WITHOUT PREJUDICE**.

The Clerk is ordered to **STRIKE** this case from the Court's docket.

The Clerk is directed to mail a copy of this Order to the pro se plaintiff, certified mail, return receipt requested, and to transmit copies of this Order to counsel of record.

Dated: November 21, 2008.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE