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

**JAMES PRESTON RILEY,**

**Plaintiff,**

**v.** **Civil Action No. 1:08CV110**
**(Judge Keeley)**

**GEORGE TRENT, RYON P. FULTON,**
**WILLIAM GASKINS, and THOMAS MCCRAY,**

**Defendants.**

**ORDER ADOPTING REPORT AND RECOMMENDATION**

On April 29, 2008, the pro se plaintiff James Preston Riley ("Riley") filed a complaint against the above named defendants pursuant to 42 U.S.C. § 1983. In his complaint Riley alleges that the defendants used excessive force against him in violation of the Eighth Amendment's prohibition on cruel and unusual punishment. The Court referred this matter to United States Magistrate Judge John S. Kaull for initial screening and a report and recommendation in accordance with 28 U.S.C. § 1915A and Local Rule of Prisoner Litigation 83.02.

On July 2, 2008, the defendants filed a motion to dismiss, to which Riley responded on July 31, 2008. In addition, on that same date, Rile filed a renewed motion for appointed counsel, a motion to amend his Complaint, and a motion for production of documents. On August 8, 2008, the defendants filed a motion to supplement their motion to dismiss, which the Magistrate Judge granted on September 29, 2008.

**ORDER ADOPTING REPORT AND RECOMMENDATION**

On December 23, 2008, Magistrate Judge Kaull issued a Report and Recommendation ("R&R") recommending that the Court grant the defendants motion to dismiss to the extent that it seeks dismissal of the Complaint without prejudice based on Riley's failure to exhaust his administrative remedies. It additionally recommends denying Riley's motion to appoint counsel, motion to amend his Complaint, and motion for production of documents as moot.

The R&R also specifically warned Riley that failure to object to the recommendations within ten days of receipt of the R&R would result in the waiver of his appellate rights on this issue. Nevertheless, no objections have been filed.[1]

Consequently, the Court **ADOPTS** the R&R in its entirety (dkt. no. 36), **GRANTS** the defendants' motion to dismiss for failure to exhaust administrative remedies (dkt. no. 20), **DENIES AS MOOT** Riley's renewed motion to appoint counsel (dkt. no. 25), motion to amend his Complaint (dkt. no. 26), and motion for production of documents (dkt. no. 27), and **DISMISSES** this case **WITHOUT PREJUDICE** from the Court's docket.

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[1] Riley'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 issues 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).

It is so **ORDERED.**

The Court directs the Clerk to transmit copies of this Order to counsel of record, and to the pro se plaintiff, by certified mail, return receipt requested.

Dated: January 14, 2009.

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