IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

MELVIN SMITH, # 204766	)	
	)	
Plaintiff,	)	
	)	
v.	)	CASE NO. 2:16-CV-908-WKW
	)	(WO)
ROBERT BENTLEY, *et al.*,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

On March 16, 2017, the Magistrate Judge filed a Recommendation (Doc. # 10) that Defendant Robert Bentley be dismissed on grounds that the complaint and amended complaint contain no factual allegations connecting Defendant Bentley to the acts or omissions that form the basis of Plaintiff's claims. On April 4, 2017, Plaintiff filed an objection to the Recommendation. (Doc. # 11.) The court has conducted an independent and *de novo* review of those portions of the Recommendation to which objection is made. *See* 28 U.S.C. § 636(b).

In the objection, Plaintiff does not deny that his complaint, as currently stated, contains no factual allegations connecting Defendant Bentley to Plaintiff's claims. Instead, Plaintiff seeks to assert new factual allegations and theories of liability against Defendant Bentley. Plaintiff's objection is due to be overruled because Plaintiff has not moved for leave to amend the complaint to add those factual

allegations and theories of liability against Defendant Bentley. *Cf. Williams v. McNeil*, 557 F.3d 1287, 1292 (11th Cir. 2009) ("[W]e . . . hold that a district court has discretion to decline to consider a party's argument when that argument was not first presented to the magistrate judge.").

Accordingly, it is ORDERED as follows:

1. Plaintiff Melvin Smith's objection (Doc. # 11) is OVERRULED.

2. The Recommendation (Doc. # 10) is ADOPTED.

3. Plaintiff Melvin Smith's claims against Defendant Robert Bentley are DISMISSED without prejudice and prior to service, pursuant to the provisions of 28 U.S.C. § 1915(e)(2)(B). This dismissal is without prejudice to Plaintiff's filing a motion for leave to amend the complaint to assert claims against Defendant Bentley.

4. This case is REFERRED back to the Magistrate Judge for further proceedings on Plaintiff Melvin Smith's remaining claims.

DONE this 11th day of April, 2017.

/s/ W. Keith Watkins
CHIEF UNITED STATES DISTRICT JUDGE