

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

JAMES CARL BURNS,)	
)	
Plaintiff,)	
)	
v.)	2:17-cv-00498-RDP-JEO
)	
JAMES ROGERS, et al.,)	
)	
Defendants.)	

MEMORANDUM OPINION

The Magistrate Judge filed a report on June 6, 2018, recommending Plaintiff’s claims against the unknown insurance company and his claims against defendant Rodgers in his official capacity for money damages be dismissed without prejudice pursuant to 28 U.S.C. § 1915A(b)(1), for failing to state a claim upon which relief may be granted. (Doc. 30). The Magistrate Judge further recommended that defendant Rodgers’ motion for summary judgment on Plaintiff’s Fourth Amendment excessive force claim be granted and the claim be dismissed with prejudice. (*Id.*).

Additionally, the Magistrate Judge notified Plaintiff that summary judgment may be due on Plaintiff’s Fourteenth Amendment due process claim against Rodgers. *See* Fed. R. Civ. P. 56(f)(2)-(3). (Doc. 30). The Magistrate Judge directed Plaintiff to respond with any and all evidence and argument in opposition to the *sua sponte* motion for summary judgment within twenty (20) days. (*Id.* at 37). The

Magistrate Judge also advised the parties of their right to file specific written objections to the report and recommendation within twenty (20) days. (*Id.*).

Twenty days have elapsed and Plaintiff has not responded. And neither party has filed objections to the report and recommendation.

Having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation, the Magistrate Judge's report is hereby **ADOPTED** and the recommendation is **ACCEPTED**. Therefore, in accordance with 28 U.S.C. § 1915A(b)(1), Plaintiff's claims against the unknown insurance company and his claims against defendant Rodgers in his official capacity for money damages are due to be dismissed without prejudice for failing to state a claim upon which relief can be granted.


The court further finds that defendant Rodgers' motion for summary judgment on Plaintiff's Fourth Amendment excessive force claim is due to be granted, as there are no genuine issues of material fact. Moreover, the Magistrate Judge's summary judgment is also due to be granted as Plaintiff has failed to show that Rodgers' actions rose to a level that shocks the conscience or was otherwise unconstitutional. *See County of Sacramento v. Lewis*, 523 U.S. 833, 837, 853-54 (1998). Specifically, Plaintiff has presented no evidence that defendant Rodgers intended to harm him physically, intended to worsen his legal plight by colliding with him, or was motivated by anything other than a desire to stop the pursuit and arrest Plaintiff. *Id.*

Therefore, no genuine issues of material fact exist and Rodgers is entitled to summary judgment on this claim.

Because Plaintiff's § 1983 claims are due to be dismissed, to the extent Plaintiff has alleged supplemental state law claims against defendant Rodgers, such claims are due to be dismissed without prejudice pursuant to 28 U.S.C. § 1367(c)(3).

A Final Judgment will be entered dismissing this case in its entirety.

DONE and **ORDERED** this July 3, 2018.



R. DAVID PROCTOR
UNITED STATES DISTRICT JUDGE