

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
MIDDLE DIVISION**

| | | |
|--------------------------------|---|---------------------------------------|
| DEXTER FIELDS, |) | |
| |) | |
| Plaintiff |) | |
| |) | |
| vs. |) | Case No. 4:11-CV-04318-VEH-HGD |
| |) | |
| CORDARO MELTON, et al., |) | |
| |) | |
| Defendants |) | |

PARTIAL DISMISSAL ORDER

The magistrate judge filed a report and recommendation on December 10, 2012, recommending that the plaintiff's claims against the defendants in their official capacities for monetary relief and the plaintiff's supervisory liability claims against defendant Estes be dismissed under 28 U.S.C. § 1915A(b) for failing to state a claim upon which relief may be granted. The magistrate judge further recommended that the plaintiff's Eighth Amendment excessive force claims against defendants Melton and Thurman be referred to the undersigned magistrate judge for further proceedings.

The plaintiff filed objections to the report and recommendation on December 26, 2012. (Doc. 7). Review of the plaintiff's objections reveal that he is apparently under the impression that the report and recommendation filed by the magistrate judge was

actually a motion to dismiss filed by the defendants. As such, he requests additional time to prepare a response and leave to file an amended complaint so that he can “fix” it. (Doc. 7 at 2-3). The plaintiff is apparently unaware that the magistrate judge recommended that two of his claims proceed beyond this point.

Having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation and plaintiff’s objections thereto, the court is of the opinion that the magistrate judge’s report is due to be and is hereby **ACCEPTED**, the plaintiff’s objections are **OVERRULED**, and the magistrate judge’s recommendation is **ADOPTED**.

It is therefore **ORDERED, ADJUDGED, and DECREED** that all of plaintiff’s claims in this action, except his Eighth Amendment excessive force claims against defendants Melton and Thurman, are **DISMISSED** pursuant to 28 U.S.C. § 1915A(b)(1). It is further **ORDERED** that plaintiff’s Eighth Amendment excessive force claims against defendants Melton and Thurman are **REFERRED** to the magistrate judge for further proceedings.

Should the plaintiff still desire to file an amended complaint, he may, within thirty (30) days of the entry date of this order, file a motion requesting leave to do so, accompanied by the proposed amended complaint.

DONE and **ORDERED** this the 23rd day of January, 2013.



VIRGINIA EMERSON HOPKINS
United States District Judge