

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

<b>DAVID BOY FULLER,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>Case No. 4:12-cv-03957-CLS-TMP</b>
	)	
<b>NURSE WHEAT, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

**MEMORANDUM OPINION**

The magistrate judge filed a report and recommendation<sup>1</sup> on January 11, 2016, recommending that:

(1) Plaintiff’s Eighth amendment medical claims against defendants Pavlakovic, Wheat, Phillips, Shankles, Boatwright, Butler, Klinner, Russell, Webb, and Battle be dismissed without prejudice for failure to exhaust administrative remedies pursuant to 42 U.S.C. § 1997e(a);

(2) Defendants Pavlakovic, Wheat, Phillips, Shankles, Boatwright, Butler, Klinner, Russell, Webb, and Battle’s motion for summary judgment be deemed moot due to their dismissal without prejudice for want of exhaustion of administrative remedies;

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<sup>1</sup> Doc. no. 61.

(3) Defendants Heflin, Massey, Bell, and Hammer be dismissed without prejudice pursuant to Rule 4(m) of the *Federal Rules of Civil Procedure* because they were not served with a copy of the amended complaint within the allotted time;

(4) Defendants McDowell and Sanders' motion for summary judgment on plaintiff's Eighth Amendment supervisory liability claims be granted, and the claims be dismissed with prejudice;

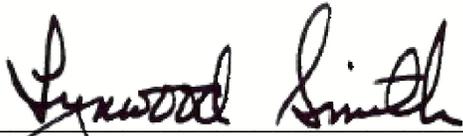
(5) Defendant Zuspan's motion for summary judgment on plaintiff's claims of threats and verbal harassment be granted, and the claims be dismissed with prejudice; and

(6) Defendant Marcano's motion for summary judgment on plaintiff's First Amendment retaliation claim be granted, and the claim be dismissed with prejudice. No objections have been filed by any party.

Having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation, the Court is of the opinion that the magistrate judge's report is due to be, and it hereby is, **ADOPTED**, and his recommendation is **ACCEPTED**. Plaintiff's claims against Pavlakovic, Wheat, Phillips, Shankles, Boatwright, Butler, Klinner, Russell, Webb, Battle, Heflin, Massey, Bell, and Hammer are due to be **DISMISSED WITHOUT PREJUDICE**. The Court **EXPRESSLY FINDS** that there are no genuine issues of material fact

concerning plaintiff's claims against defendants McDowell, Sanders, Zuspan, and Marcano, and those defendants are entitled to judgment as a matter of law. Accordingly, McDowell, Sanders, Zuspan, and Marcano's motion for summary judgment is due to be **GRANTED** and plaintiff's claims against them are due to be **DISMISSED WITH PREJUDICE**. A Final Judgment will be entered.

DONE this 16th day of March, 2016.

  
United States District Judge