

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION**

JEFFERY ALLEN McCLELLAN,)

Plaintiff,)

vs.)

CORRECTIONAL OFFICER EDWARDS,)

Defendant.)

Case No.: 7:13-cv-00950-VEH-SGC

ORDER

By a report and recommendation entered on July 1, 2014, the magistrate judge recommended the motion for summary judgment filed by Defendant, Correctional Officer Michael Edwards (“Defendant”), be granted as to the claim of Plaintiff, Jeffery Allen McClellan (“Plaintiff”), against him in his official capacity for monetary damages and that that claim be dismissed with prejudice. (Doc. 25). The magistrate judge further recommended Defendant’s motion for summary judgment be denied as to Plaintiff’s Eighth Amendment excessive force claim against him. (*Id.*). Lastly, the magistrate judge recommended Defendant’s motion for summary judgment as to Plaintiff’s Eighth Amendment excessive force claim on the basis of qualified immunity be denied. (*Id.*). The parties were allowed fourteen (14) days to file written objections to the magistrate

judge's report and recommendation. On July 16, 2014, Plaintiff filed objections. (Doc. 26).

Plaintiff argues his claim against Defendant in his official capacity for monetary damages should not be dismissed. (Doc. 26 at 1). It is well settled state officials sued for monetary damages in their official capacities are immune from suit under the Eleventh Amendment. *Kentucky v. Graham*, 473 U.S. 159, 169 (1985). Therefore, Plaintiff cannot recover monetary damages from Defendant in his official capacity.

Having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation and the objections thereto, the Court is of the opinion the magistrate judge's report is due to be and is hereby **ADOPTED** and the magistrate judge's recommendation is **ACCEPTED**. Defendant's motion for summary judgment is, therefore, due to be and is hereby **GRANTED IN PART** and **DENIED IN PART**.

Defendant's motion for summary judgment is **GRANTED** to the extent Plaintiff seeks monetary relief against Defendant in his official capacity, and that claim is **DISMISSED WITH PREJUDICE**. Defendant's motion for summary judgment is **DENIED** as to Plaintiff's Eighth Amendment excessive force claim against him. Defendant's motion for summary judgment on the basis of qualified immunity as to Plaintiff's Eighth Amendment excessive force claim is also **DENIED**.

Defendant is hereby **ORDERED** to file an answer to Plaintiff's claims that were not dismissed by this Order within twenty (20) days of the entry date of this Order.

DONE this 22nd day of July, 2014.



VIRGINIA EMERSON HOPKINS

United States District Judge