

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

<p>EARL MANASSA, #175099,</p> <p style="padding-left: 40px;">Plaintiff,</p> <p>vs.</p> <p>CYNTHIA STEWART, et al.,</p> <p style="padding-left: 40px;">Defendants.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>CIV. ACT. NO. 1:19-cv-519-TFM-N</p>
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MEMORANDUM OPINION ORDER

On November 23, 2020, the Magistrate Judge entered a report and recommendation which recommends Plaintiff’s complaint be dismissed with prejudice pursuant to 28 U.S.C. § 1915A(b)(1) for failure to state a claim upon which relief can be granted. *See* Doc. 9. Plaintiff timely filed objections. *See* Doc. 10. The Court has reviewed the report and recommendation, objections, and conducted a de novo review of the case file. For the reasons discussed below, the objections are **OVERRULED** and the Report and Recommendation is **ADOPTED as modified below**.

28 U.S.C. § 1915A states “[t]he court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.” Further, the Court shall dismiss the complaint, or any portion of it “is frivolous, malicious, or fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915A(b)(1).

Plaintiff notes in his objections that he disagrees with the Magistrate Judge’s analysis regarding his claims. In reviewing his objections, for the most part, they do little to refute the well-reasoned analysis of the Magistrate Judge. However, the Court does take issue with one point on

the Magistrate Judge's Recommendation. With regard to Claim 2 on the conditions of confinement under the Eighth Amendment, the Magistrate Judge recommends dismissal with prejudice noting he has failed to allege specific facts despite the opportunity to amend. The Court agrees that dismissal is appropriate under these circumstances but also does not find that dismissal with prejudice is appropriate as there is caselaw that indicates that an excessive amount of vermin and insect infestation can rise to a claim for relief if sufficiently pervasive for an extended period. *See, e.g., Quintanilla v. Bryson*, 730 F. App'x 738, 747 (11th Cir. 2018). To be clear, Plaintiff's current allegations are not sufficient because they are vague despite being given the opportunity to amend. But, as this is a preliminary review under § 1915A without the benefit of any additional information, the Court is not inclined to permanently foreclose the claim should more facts be available. As such, while the objections are overruled and the recommendation adopted, with regard to the conditions of confinement raised in Claim 2, the claims are dismissed without prejudice.

After due and proper consideration of all portions of this file deemed relevant to the issues raised, and a *de novo* determination of those portions of the Report and Recommendation to which objection is made, the Report and Recommendation (Doc. 9) is **ADOPTED** as the opinion of the Court as modified. Accordingly, it is **ORDERED** that this action is **DISMISSED**. The claims pertaining to the placement in the segregation annex articulated in Claims 1 and 2 are **dismissed with prejudice** while the conditions of confinement claims articulated in Claim 2 is **dismissed without prejudice** under 28 U.S.C. § 1915A(b)(1).

DONE and ORDERED this 21st day of January, 2021.

/s/Terry F. Moorer
TERRY F. MOORER
UNITED STATES DISTRICT JUDGE