

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

**SAM EDWARD THURMOND, SR.,
*et al.***

PLAINTIFFS

V.

4:08CV01792 WRW-BD

KARL BYRD, *et al.*

DEFENDANTS

ORDER

The Court has received the Partial Recommended Disposition (Doc. No. 17) from Magistrate Judge Beth Deere. After careful review of the Partial Recommended Disposition, the timely objections received, as well as a de novo review of the record, I conclude that the Partial Recommended Disposition should be approved in part and denied in part.

Plaintiff only raises objection to the dismissal of Defendant Wilcox.¹ The Partial Recommended Disposition states that Defendant Wilcox “is not mentioned in Plaintiff’s Second Amended Complaint” and should be dismissed as a defendant in this action, because an amended complaint supercedes an original complaint.² However, Plaintiff does specifically refer to Defendant Wilcox his Second Amended Complaint.³ Plaintiff alleges that Defendant Wilcox, as the supervising officer, directed his subordinates to engage in the constitutionally challenged conduct after Defendant Wilcox performed a “shakedown” of Plaintiff.⁴ As a result, Plaintiff may continue his claims against Defendant Wilcox.

¹Doc. No. 23.

²Doc. No. 17 (citing *In re Atlas Van Lines, Inc.*, 209 F.3d 1064, 1067 (8th Cir. 2000).

³Doc. No. 15 (¶ 2).

⁴*Id.*

I adopt all other findings in the Partial Recommended Disposition. Therefore, Defendants Byrd, Brown, Shock, and Randall are DISMISSED, without prejudice, as party Defendants; Plaintiffs Brown and Hawkins are DISMISSED, without prejudice, from this case so that they may pursue their factually distinct claims in their separately filed actions; Plaintiff Thurmond's claims challenging his disciplinary conviction are DISMISSED without prejudice; Plaintiff Thurmond's Motion to Amend his Complaint (docket entry #16) is DENIED; and Plaintiff Thurmond's Motion to Enjoin Plaintiffs as a Class Action (#10) is DENIED.

IT IS SO ORDERED this 1st day of October, 2008.

/s/Wm. R. Wilson, Jr.
UNITED STATES DISTRICT JUDGE