

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION**

LISA ROCHELLE EVERETT

PLAINTIFF

V.

NO: 4:15CV00547 SWW

MCPHERSON PRISON

DEFENDANT

ORDER

Plaintiff Lisa Rochelle Everett, a former prisoner in the Arkansas Department of Correction (ADC), brings this *pro se* 42 U.S.C. § 1983 action against the ADC's McPherson Unit for damages arising out of her alleged exposure to a "certain black, dark substance" that began to "rain down" on her as the staff was cleaning the air conditioning unit on August 26, 2014. Everett claims she was sleeping at the time and that some of this substance went into her mouth and deposited over her upper body causing her to become ill. Everett, who is no longer incarcerated, claims she is still suffering from the incident.

Now before the Court are Proposed Findings and Recommended Disposition submitted by United States Magistrate Judge Patricia S. Harris. No objections have been filed.¹ After careful

¹ Plaintiff has, however, filed a belated motion for order [doc.#17] in which she asks Judge Harris to "order that I would be able to receive my medical record from McPherson Medical Department." The Court denies this motion as Judge Harris has already denied plaintiff's request for those medical records, explaining to plaintiff that "[b]ased on plaintiff's filings in this matter, it does not appear that access to her medical records at this time would enable her to identify the individuals who were responsible for her exposure to the black, dark substance about which she complains. Plaintiff was ordered to submit an amended complaint identifying the individuals responsible for the alleged violations, e.g., her exposure to the substance. She has not at this time been ordered to produce information about any medical treatment she may have received." See Order of February 23, 2016 (denying plaintiff's motion for reconsideration of the denial of her motion to compel) [doc.#15].

consideration, the Court concludes that the Proposed Findings and Recommended Disposition should be, and hereby are, approved and adopted in their entirety as this Court's findings in all respects.²

IT IS THEREFORE ORDERED THAT:

1. Plaintiff's complaint is DISMISSED WITHOUT PREJUDICE for failure to respond to the Court's order.

2. The Court certifies that an *in forma pauperis* appeal taken from the order and judgment dismissing this action is considered frivolous and not in good faith.

DATED this 12th day of April, 2016.

/s/Susan Webber Wright
UNITED STATES DISTRICT JUDGE

² The Court observes as well that the alleged incident of which Everett complains describes at the most negligence (a term Everett herself uses). Mere negligence, however, is not actionable under § 1983. See, e.g., *Carter v. Arkansas Department of Correction*, No. 5:08cv00222, 2008 WL 4102719, at *3 (E.D. Ark. Sept. 3, 2008).