

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

SYLVESTER O. BARBEE
ADC #131311

PLAINTIFF

v.

NO. 5:14CV00265 JLH/JWC

CHERI ELLIS, *et al.*

DEFENDANTS

ORDER

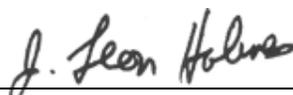
United States Magistrate Judge Jerry W. Cavaneau has submitted a partial recommended disposition in which he recommends that the Court grant the motion for summary judgment filed by defendants Cheri Ellis and Aundrea Weekly with respect to the plaintiff's claims for monetary damages against them in their official capacities and deny the motion for summary judgment in all other respects. The plaintiff, Sylvester O. Barbee, has not objected. The defendants have objected to the portion of Judge Cavaneau's recommendation stating that the Court should deny the motion for summary judgment except as to the claims for monetary damages against them in their official capacities. Judge Cavaneau's recommendation is not based on the merits of the motion. Rather, the recommendation was based upon the plaintiff's argument that he had not received adequate responses to his discovery demands and should not be required to respond until he has received them, and upon Judge Cavaneau's conclusion that the Court needed to be involved in the discovery process by way of a discovery hearing before him with short deadlines for any further production. The defendants argue that they have complied with all of the plaintiff's legitimate discovery requests and that they are entitled to summary judgment on the merits.

Federal Rule of Civil Procedure 56(d) provides that when a non-movant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the Court may defer considering the motion or deny it, allow time to obtain affidavits or declarations

or to take discovery; or issue any other appropriate order. In keeping with Rule 56(d), rather than deny any portion of the motion for summary judgment, the Court has decided to defer considering it and allow time for further discovery, after Judge Cavaneau conducts a discovery hearing and imposes any deadlines for further production that he deems appropriate.

The Court therefore adopts the portion of the partial recommended disposition (Document #134) recommending that summary judgment be granted on the plaintiff's claims for monetary damages against Cheri Ellis and Aundrea Weekly in their official capacities. The plaintiff's claims for monetary damages against the defendants in their official capacities are dismissed with prejudice. The Court declines to adopt the remainder of the partial recommended disposition. Rather than rule at this time on the remaining aspects of the motion for summary judgment, the Court again refers this action to United States Magistrate Judge Jerry W. Cavaneau for further proceedings consistent with this Order. Specifically, Judge Cavaneau will conduct the discovery hearing that he has recommended be held, set deadlines for any other production as he deems appropriate, set a deadline for the plaintiff to respond to the motion for summary judgment on the merits, and issue a recommended disposition that addresses the merits of the motion for summary judgment.

IT IS SO ORDERED this 8th day of March, 2016.



J. LEON HOLMES
UNITED STATES DISTRICT JUDGE