

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

KeONDRA M. CHESTANG
ADC #134005

PLAINTIFF

v.

No. 5:16-cv-224-DPM

V. ALLEN, Mailroom, Varner Unit; BROWN,
Sergeant, Varner Unit; ANDREWS, Assistant
Warden of Treatment, Varner Unit; JAMES
PLUMMER, Varner Unit; BARBARA SMALLWOOD,
Business Manager/Mailroom Supervisor Aide,
Varner Unit; DUNCAN, Sergeant, Varner Unit;
and WRIGHT, Wrightsville Unit

DEFENDANTS

ORDER

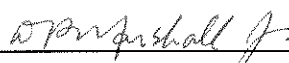
1. On *de novo* review, the Court adopts the recommendation, *No 8*, as modified and overrules most of Chestang's objections, *No 11-12*. FED. R. CIV. P. 72(b)(3).

2. The modifications: First, inadvertent opening of a prisoner's legal mail may sometimes support a § 1983 claim. *Compare No 8 at 5-6 with Beaulieu v. Ludeman*, 690 F.3d 1017, 1037 (8th Cir. 2012). But the Magistrate Judge's conclusion holds because Chestang hasn't alleged any prejudice from the inadvertent opening of his mail. *Ibid*.


Second, Chestang believes he's stated a solid Eighth Amendment claim. *No 11 at 3 & No 6-1 at 7*. He hasn't. The facts in his complaint don't rise to the level of cruel and unusual punishment. *Phillips v. Norris*, 320 F.3d 844, 848 (8th Cir. 2003).

3. Chestang's motion for service, *No 5*, is denied. His complaint will be dismissed without prejudice for failure to state a claim. This dismissal counts as a "strike" for purposes of 28 U.S.C. § 1915(g). An *in forma pauperis* appeal from this Order and accompanying Judgment would not be taken in good faith. 28 U.S.C. § 1915(a)(3).

So Ordered.



D.P. Marshall Jr.
United State District Judge



14 December 2016