

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

**DENNIS J. CHEATHAM  
ADC #136117**

**PLAINTIFF**

**VS.**

**5:16-CV-00239 BRW/JTR**

**JOHN DOES 1-4, unknown Varner Unit Warden  
and Correctional Officers; and  
CHERYLE JOHNSON, Captain, Varner Unit, ADC**

**DEFENDANTS**

**ORDER**

I have reviewed the Recommendation submitted by United States Magistrate Judge J. Thomas Ray and the filed objections. After carefully considering these documents and making a *de novo* review of the record in this case, I approve and adopt the Recommendation as set out below:

Defendant's motions to dismiss are GRANTED IN PART and DENIED IN PART (Doc. Nos. 12, 25). Plaintiff's failure to protect claim against Johnson in her official capacity is dismissed with prejudice. Plaintiff may proceed with his failure to protect claim against Johnson in her individual capacity.

Johnson must file her answer within 14 days of the entry of this Order.<sup>1</sup>

I certify that an *in forma pauperis* appeal from this Order would not be taken in good faith.<sup>2</sup>

IT IS SO ORDERED this 3d day of February, 2017.

/s/ Billy Roy Wilson  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> Fed. R. Civ. P. 12(a)(4)(A).

<sup>2</sup>28 U.S.C. § 1915(a)(3) and (g).