

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

**RUSSELL BERGER  
ADC #115855**

**PLAINTIFF**

**VS.**

**No: 5:17-cv-00250 BRW-PSH**

**JAMES GIBSON, *et al.***

**DEFENDANTS**

**ORDER**

I have reviewed the Proposed Findings and Recommended Disposition submitted by United States Magistrate Judge Patricia S. Harris, and the objections filed. After carefully considering the objections and the Amended Complaint filed on November 22, 2017, and making a *de novo* review of the record in this case, I approve and adopt the Proposed Findings and Recommended Disposition in their entirety.

Accordingly, Berger's complaint is dismissed without prejudice for failure to state a claim upon which relief may be granted.

Dismissal of this action counts as a "strike" within the meaning of 28 U.S.C. § 1915(g).

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal from the order adopting this recommendation and accompanying judgment would not be taken in good faith.

IT IS SO ORDERED, this 27th day of November, 2017.

/s/ Billy Roy Wilson \_\_\_\_\_  
UNITED STATES DISTRICT JUDGE