

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
EL DORADO DIVISION

PHILLIP McDANIEL

PLAINTIFF

v.

CASE NO. 1:14-CV-01042

JAILER SLADE NICHOLSON; NATHAN GREELEY  
(Jail Administrator, Ouachita County Detention  
Complex)

DEFENDANTS

**ORDER**

Before the Court is the Amended Report and Recommendation filed August 5, 2015 by the Honorable Barry A. Bryant, United States Magistrate Judge for the Western District of Arkansas. (ECF No. 41). Judge Bryant recommends that Defendant Nathan Greeley's First Motion to Dismiss (ECF No. 16) be granted as to the official capacity claims and denied as to the individual capacity claims. Plaintiff has responded to Judge Bryant's official capacity findings with several objections. (ECF No. 42). The Court has reviewed these objections and finds that Plaintiff's contentions offer neither law nor fact requiring departure from the Report and Recommendation.

In order to be successful in his official capacity claims, Plaintiff must allege that a custom or policy of Ouachita County existed that violated his constitutional rights. *See Gorman v. Bartch*, 152 F.3d 907, 914 (8th Cir.1998). In his complaint, Plaintiff stated that there exists such a policy or custom, but he does not allege any facts to support his claim. Plaintiff should have alleged facts and circumstances showing the existence of a permanent, well settled, widespread policy or custom that affected him. Plaintiff makes no allegations and presents no facts that show his constitutional rights were violated as the result, or even the existence, of Ouachita County's policy or custom. As

a result, Defendant is entitled to dismissal on this issue under Fed. R. Civ. P. 12(b)(6).

After reviewing the record *de novo*, the Court overrules Plaintiff's objections and adopts Judge Bryant's Amended Report and Recommendation (ECF No. 41) *in toto*. For the reasons stated above, as well as those contained in the Report and Recommendation, Defendant Nathan Greely's Motion to Dismiss (ECF No. 16) is **GRANTED** as to the official capacity claims and **DENIED** as to the individual capacity claims.

**IT IS SO ORDERED**, this 9th day of September, 2015.

/s/ Susan O. Hickey  
Susan O. Hickey  
United States District Judge