

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

MICHAEL TODD

PLAINTIFF

v.

Case No. 4:13-cv-04058

JOHNNY GODBOLT; and
SERGEANT STAGGS

DEFENDANTS

ORDER

Before the Court is the Report and Recommendation filed by the Honorable Barry A. Bryant, United States Magistrate Judge for the Western District of Arkansas. (ECF No. 31). Judge Bryant recommends Defendant Godbolt's Motion for Summary Judgment (ECF No. 19) be granted, and Plaintiff's claims against Defendant Sergeant Staggs be dismissed. Plaintiff Michael Todd has timely submitted objections to Judge Bryant's Report and Recommendation. (ECF No. 32). The Court finds this matter ripe for its consideration.

Judge Bryant found that Plaintiff brought these claims against Defendants in their official capacities because Plaintiff did not state in which capacity the claims were brought. Plaintiff asserts that he did not specify his claims as individual or official capacity due to the form provided to him by the clerk. If the Court would have asked Plaintiff, he would have clarified that he wishes only to bring the claims against Defendants in their individual capacity. Specifically, he claims that Judge Bryant erred in construing the claims against Defendant Staggs as an official capacity claim.

Eighth Circuit precedent requires the Court to construe Plaintiff's Complaint to state official capacity claims only if there is no express statement that public officials are being sued in their individual capacity. *Johnson v. Outboard Marine Corp.*, 172 F.3d 531, 535 (8th Cir. 1999). Plaintiff did not specify the capacity in which he intended to bring these claims. It is the duty of the Plaintiff, not the Court, to state the capacity in which Defendants are being sued. Accordingly, his

objection on this point is overruled.

Plaintiff's other statements in his objections are not specific. Plaintiff must make specific objections to the Report and Recommendation. Objections which are not specific do not trigger de novo review by the Court.

Accordingly, the Report and Recommendation (ECF No. 31) is adopted *in toto*. For the reasons stated herein, as well as the reasons stated in the Report and Recommendation, Defendant Godbolt's Motion for Summary Judgment (ECF No. 19) is **GRANTED**. Plaintiff's claims against Defendant Godbolt are dismissed with prejudice. Additionally, Plaintiff's claims against Defendant Sergeant Staggs are dismissed without prejudice pursuant to 28 U.S.C. §§ 1915(e)(2)(B) & 1915 (A).

IT IS SO ORDERED, this 11th day of February, 2016.

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