

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

CHARLES SAMUEL JOHNSON, JR.

PLAINTIFF

v.

Case No. 4:16-cv-4109

CORPORAL TEFT, OFFICER RODRIGUEZ,
CORPORAL HENSLEY, SERGEANT MOON,
CORPORAL GRIFFIE

DEFENDANTS

ORDER

Before the Court is the Report and Recommendation filed October 25, 2018, by the Honorable James R. Marschewski, United States Magistrate Judge for the Western District of Arkansas. (ECF No. 75). No party has objected to the Report and Recommendation and the time to do so has passed. *See* 28 U.S.C. § 636(b)(1). The Court finds the matter ripe for consideration.

Also before the Court is Plaintiff's motion for disbursement of funds. (ECF No. 77). Defendants have not responded to the motion and the time to do so has passed. *See* Local Rule 7.2(b). The Court finds the matter ripe for consideration.

On November 11, 2016, Plaintiff filed this action pursuant to 42 U.S.C. § 1983, alleging that Defendants violated his constitutional rights while he was incarcerated in the Miller County Detention Center. Specifically, Plaintiff asserts a claim of failure to protect against Defendants Teft, Rodriguez, and Moon. Plaintiff also asserted a claim of excessive force against all Defendants.¹

On May 10, 2018, the parties underwent a mandatory settlement conference presided over by Judge Marschewski. At the settlement conference, the parties agreed to settle the case for

¹ On April 4, 2018, Plaintiff filed a motion to withdraw his excessive force claim. On April 18, 2018, the Court granted that motion and dismissed Plaintiff's excessive force claim without prejudice.

\$2,000.00. As part of the settlement, Plaintiff agreed to dismiss his failure to protect claim. Subsequently, Plaintiff refused to sign release documents that were sent to him. Instead, he filed two motions with the Court, requesting clarification of the nature of the settlement agreement and requesting the Court to order Defendants to comply with the terms of the settlement. The Court denied both motions. On July 17, 2018, the Court entered a judgment, closing this case and retaining jurisdiction in the event that the settlement was not completed and further litigation was necessary. On August 16, 2018, Defendants filed a motion for leave to deposit the agreed-upon settlement funds into the registry of the Court. On October 25, 2018, the Court granted Defendants' motion to deposit settlement funds into the registry of the Court.

On October 25, 2018, Judge Marschewski issued the instant Report and Recommendation. Judge Marschewski recommends that the Court dismiss Plaintiff's failure to protect claim with prejudice, pursuant to the parties' settlement agreement. Judge Marschewski also recommends that the Court advise Plaintiff that he may petition the Court for disbursement of the settlement funds currently held in the registry of the Court. To date, Plaintiff has not filed objections to the Report and Recommendation. However, on November 8, 2018, Plaintiff filed a motion for disbursement of settlement funds, stating that he agrees to release Defendants from liability on his failure to protect claim and requesting that the Court mail him the agreed-upon settlement funds via check or money order.

Judge Marschewski's Report and Recommendation and Plaintiff's motion each seek the same outcome: that Plaintiff's failure to protect claim be dismissed with prejudice and that Plaintiff petition for disbursement of the settlement funds. The Court has reviewed the case, and being well and sufficiently advised, finds that the Report and Recommendation is proper and should be adopted in its entirety. Therefore, the Court adopts the Report and Recommendation

(ECF No. 75) *in toto*. Additionally, Plaintiff's motion (ECF No. 77) is hereby **GRANTED**. Accordingly, Plaintiff's failure to protect claim is hereby **DISMISSED WITH PREJUDICE**. The Clerk of Court is **DIRECTED** to provide Plaintiff with the \$2,000.00 in settlement funds previously deposited by Defendants into the registry of the Court.

IT IS SO ORDERED, this 30th day of November, 2018.

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