

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

WESLEY TIMOTHY FULLARD,

Plaintiff,

v.

Case No. 4:16cv507-MW/CAS

MARY W. THOMAS and
C. RHODES,

Defendants.

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ORDER ACCEPTING REPORT AND RECOMMENDATION

This Court has considered, without hearing, the Magistrate Judge's Third Report and Recommendation, ECF No. 88, and has also reviewed *de novo* Defendants' objections to the third report and recommendation, ECF No. 89. Accordingly,

IT IS ORDERED:

The report and recommendation is **accepted and adopted**, over Defendants' objections, as this Court's opinion. While a close call, this Court agrees that it's up to a jury to resolve the disputed facts such as whether Thomas was involved and ultimately to determine whether defendants were deliberately indifferent. The Defendants' motion for summary judgment, ECF No. 77, is **DENIED** because there is a genuine dispute of material fact. Plaintiff's motion, ECF No. 87, is **DENIED** and this case is **REMANDED** to the Magistrate Judge for further proceedings.

SO ORDERED on March 28, 2019.

s/Mark E. Walker
Chief United States District Judge