

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

KEITH WROMAS,

Plaintiff,

vs.

Case No. 4:18cv209-MW-MAF

**R.A. TUTEN, A. ANDERSON,
and CAPTAIN MOSS,**

Defendants.

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**AMENDED ORDER ACCEPTING IN PART
THE REPORT AND RECOMMENDATION**

In the haste of entering an Order on the Report and Recommendation, ECF No. 105, which had been pending since early July 2020, the Order was less than clear. The Report and Recommendation was accepted as to Plaintiff's motion for summary judgment, which is denied. The Report and Recommendation was accepted in part as to Defendants' motion. To be clear, Defendants' motion for summary judgment is granted as to Plaintiff's claims against Defendants Moss and Anderson and denied as to Plaintiff's Eighth Amendment claim brought against Defendant Tuten.

An Eighth Amendment claim may be sustained when force is used that offends "contemporary standards of decency," regardless of whether "significant injury is

evident.” Wilkins v. Gaddy, 559 U.S. 34, 37, 130 S. Ct. 1175, 175 L. Ed. 2d 995 (2010)). Furthermore, “[n]ominal damages are appropriate if a plaintiff establishes a violation of a fundamental constitutional right, even if he cannot prove actual injury sufficient to entitle him to compensatory damages.” Hughes v. Lott, 350 F.3d 1157, 1162 (11th Cir. 2003). The Eleventh Circuit has recently clarified that when a pro se litigant requests compensatory damages, that should be viewed as also including nominal damages. Furman v. Warden, No. 19-14134 (11th Cir. Sept. 11, 2020). Here, a jury must determine if Plaintiff’s Eighth Amendment claim was harmful enough to violate contemporary standards of decency and, in so doing, determine whether Plaintiff is entitled to monetary damages, either compensatory or nominal.

Plaintiff’s motion for summary judgment, ECF No. 85, is **DENIED**. Defendants’ motion for summary judgment, ECF No 92, is **DENIED in part**. Summary judgment is **GRANTED** in favor of Defendants Anderson and Moss, but otherwise **DENIED** as to Defendant Tuten. This matter is remanded to the Magistrate Judge for further consideration.

SO ORDERED on September 15, 2020.

s/ Mark E. Walker
Chief United States District Judge