

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF FLORIDA  
PANAMA CITY DIVISION

DWAN HETRICK,

Plaintiff,

v.

CASE NO. 5:08cv272-SPM/WCS

ESPIDIDO M. SALVADOR, et al.,

Defendants.

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**ORDER**

THIS CAUSE comes before the Court for consideration of the Magistrate Judge's Report and Recommendation (doc. 48) dated September 17, 2009, and Second Report and Recommendation (doc. 49) dated September 18, 2009.

Plaintiff has filed an objection (doc.48) pursuant to Title 28, United States Code, Section 636(b)(1). Having considered the objection, I have determined that the Report and Recommendation and Second Report and Recommendation should be adopted. Plaintiff's proposed Second Amended Complaint fails to allege sufficient facts to state a claim for relief against J. Scott Thayer, M.D.

Accordingly, it is

ORDERED AND ADJUDGED:

1. The Magistrate Judge's Report and Recommendation (doc. 48)

and Second Report and Recommendation (doc. 49) are ADOPTED and incorporated by reference in this order.

2. Plaintiff's motion to amend the complaint (doc. 46) is denied without prejudice because the proposed Second Amended Complaint fails to state a claim upon which relief may be granted as to J. Scott Thayer, M.D.

3. Defendant's motion to dismiss (doc. 33) is granted in part and denied in part.

A. The claims against Defendant Mathers are dismissed for failure to exhaust administrative remedies.

B. The claims for monetary damages against Defendant Salvador in his official capacity are dismissed due to Eleventh Amendment Immunity.

C. The motion to dismiss the remaining claims on grounds of failure to sufficiently state a claim and qualified immunity is denied.

4. The Clerk shall refer this case to the Magistrate Judge for further proceedings.

DONE AND ORDERED this 7th day of January, 2010.

*s/ Stephan P. Mickle*

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Stephan P. Mickle  
Chief United States District Judge