

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION**

**NELSON HENRY JAMES,**

**Plaintiff,**

**v.**

**Case No.: 5:09-cv-323 (CAR)**

**RALPH BATTLE, TIM JONES,  
BARBARA DALRYMPLE, NURSE  
HERSHELL, OCONEE REGIONAL  
MEDICAL CTR., MACON COLISEUM  
MEDICAL CTR., Dr. GAURANG D.  
GANHI, Nurse SMITH, SHARON  
GAYLE, Nurse MURRAY, TORMEIKA  
MILNER, REGINALD WILSON,  
SCHNETER CLAY, CAROL SCOTT,  
FREDERICK BURTON**

**Defendants.**

***ORDER ON THE UNITED STATES MAGISTRATE JUDGE’S RECOMMENDATION***

Before the Court is the United States Magistrate Judge’s Recommendation [Doc. 12] to dismiss Defendants Oconee Regional Hospital, Macon Coliseum Medical Center, Nurse Smith, and Dr. Carol Scott. Plaintiff filed an Objection [Doc. 16] to the Recommendation. Plaintiff contends that he did not have enough space to allege sufficient facts to state a claim against the above Defendants because he could not exceed a five-page limitation in the Recast Complaint [Doc. 11]. Having considered Plaintiff’s Objection and having investigated the matters *de novo*, this Court finds that first, the dismissal of both hospitals is warranted, and second, that Plaintiff should be allowed to amend his Recast Complaint to complete the allegations against Defendants Nurse Smith and Dr. Carol Scott. Therefore, the Court hereby **ADOPTS**, in part, and **REJECTS**, in part, the Recommendation.

## **DISCUSSION**

Plaintiff initially filed a 55-page Complaint [Doc. 1], in which he made unrelated claims under 42 U.S.C. § 1983 against various defendants. As a result, United States Magistrate Judge Claude W. Hicks ordered Plaintiff to recast his complaint in compliance with Federal Rule of Civil Procedure 8. The Order to Recast Complaint [Doc. 9] also contained specific instructions for Plaintiff to follow, such as clearly indicating which defendants were being sued and making a brief factual recitation of the specific acts or omissions that allegedly violated Plaintiff's constitutional rights under section 1983. Additionally, Plaintiff's Recast Complaint was limited to a questionnaire form for prisoners proceeding *pro se* under section 1983 and no more than five additional pages. Plaintiff complied and filed a Recast Complaint [Doc. 11].

In the Recommendation, Judge Hicks recommends that Defendants Oconee Regional Hospital and Macon Coliseum Medical Center be dismissed because Plaintiff has not shown that either hospital played any role in the allegedly inadequate medical care Plaintiff received. The Court agrees that such Defendants may not be held liable under section 1983 on a respondeat superior or vicarious liability basis and therefore **ADOPTS** this part of the Recommendation.

The Recommendation also recommends that Plaintiff's claims against Defendants Nurse Smith and Dr. Carol Scott be dismissed because other than being named as Defendants, no allegations were made against these individuals in Plaintiff's Recast Complaint. Plaintiff contends that because he could not exceed the five-page limit, he did not have enough space to make sufficient allegations against such Defendants. This Court will allow Plaintiff to amend his Recast Complaint to complete the statement of facts that was rendered incomplete due to the space limitation. However, Plaintiff may only make brief factual recitations of the specific actions or omissions of Defendants Nurse Smith and Dr. Carol Smith (including dates, if possible), which

allegedly were in violation of Plaintiff's constitutional rights. Plaintiff may not take this as an opportunity to add additional defendants or claims. The amended Recast Complaint is limited to no more than **three (3) pages** and no attachments may be filed. Accordingly, Plaintiff is **ORDERED** to file an amended Recast Complaint within **fourteen (14) days** from the date of this Order in accordance with the above directions. If Plaintiff does not comply with this Order, his case against Defendants Nurse Smith and Dr. Carol Smith may be dismissed.

For the reasons stated above, the Recommendation [Doc. 12] is hereby **ADOPTED** in part and **REJECTED** in part, and Plaintiff is **ORDERED** to file an amended complaint within fourteen (14) days from the date of this Order.

**SO ORDERED**, this 21st day of January, 2010.

S/ C. Ashley Royal  
C. ASHLEY ROYAL  
UNITED STATES DISTRICT JUDGE

APG/ssh