

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

XAVIER CASTRO, B87782,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 13-cv-00303-JPG-PMF
)	
MICHAEL ATCHISON, <i>et al.</i> ,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter comes before the court on the Report and Recommendation (“R & R”) (Doc. 66) of Magistrate Judge Philip M. Frazier with regard to Defendants’ Motion for Summary Judgment (Doc. 55). The Plaintiff filed a “Motion to Response Summary Judgment” which the Court is construing as an objection to the R & R (Doc. 69).

The Court may accept, reject or modify, in whole or in part, the findings or recommendations of the magistrate judge in a report and recommendation. Fed. R. Civ. P. 72(b)(3). The Court must review *de novo* the portions of the report to which objections are made. The Court has discretion to conduct a new hearing and may consider the record before the magistrate judge anew or receive any further evidence deemed necessary. *Id.* “If no objection or only partial objection is made, the district court judge reviews those unobjected portions for clear error.” *Johnson v. Zema Sys. Corp.*, 170 F.3d 734, 739 (7th Cir. 1999). The Court will review *de novo* the R & R since the Plaintiff has filed an objection to the R & R.

Summary judgment must be granted “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Spath v. Hayes Wheels Int’l-Ind., Inc.*, 211 F.3d 392, 396 (7th Cir. 2000). The reviewing court must construe the

evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in favor of that party. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *Chelios v. Heavener*, 520 F.3d 678, 685 (7th Cir. 2008); *Spath*, 211 F.3d at 396.

The Plaintiff's Motion to Response to Summary Judgment has been construed as an objection to the R & R. The motion requests a hearing on the defendant's Motion for Summary Judgment and the Court finds that a hearing is not necessary. The Plaintiff's objection repeats the allegations contained in the complaint – including the allegation that Jodie Strong was a member of the transfer team which the Plaintiff has already admitted she was not.

The objection also includes copies of pages 3, 4, and 5 and states “Defendants brought about cruel conditions cause a deliberate indifferences. And unusual punishment, (Exhibits within – Doc. #66. Pages #3. P-4, P-5 explains The all-over acts themselves.” As such, it appears that the Plaintiff agrees with the facts as set forth in the R&R within regard to the incidents.

In responding to a summary judgment motion, the nonmoving party may not simply rest upon the allegations contained in the pleadings but must present specific facts to show that a genuine issue of material fact exists. *Celotex*, 477 U.S. at 322-26; *Anderson*, 477 U.S. at 256-57; *Modrowski*, 712 F.3d at 1168. A genuine issue of material fact is not demonstrated by the mere existence of “some alleged factual dispute between the parties,” *Anderson*, 477 U.S. at 247, or by “some metaphysical doubt as to the material facts,” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Rather, a genuine issue of material fact exists only if “a fair-minded jury could return a verdict for the [nonmoving party] on the evidence presented.” *Anderson*, 477 U.S. at 252.

As stated above, the Plaintiff cannot simply rest – or repeat – the allegations in his Complaint to defeat the defendant’s motion. Therefore, the Court hereby **ADOPTS** the Report in its entirety (Doc. 66) and **GRANTS** Defendants’ Motion for Summary Judgment (Doc. 55). The negligence claims along with the Eight Amendment claims at Count 3 and 6 are **DISMISSED** without prejudice and Defendants Shane Quandt, Jodie Strong and Jacques Webb are **DISMISSED** without prejudice. The Clerk of Court is **DIRECTED** to enter judgment accordingly at the close of this matter.

IT IS SO ORDERED.

DATED: 11/12/2015

s/J. Phil Gilbert

J. PHIL GILBERT
DISTRICT JUDGE