

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

MICHAEL EZELL
(#343050)

VERSUS

MAJOR JOSEPH HOOKER, ET AL

CIVIL ACTION

NO. 09-180-JVP-CN

RULING

The court, having carefully considered the motion, the record, the law applicable to this action, and the Report and Recommendation (doc. 20) of United States Magistrate Judge Christine Noland, to which no objection has been filed, hereby approves the report and recommendation of the magistrate judge and adopts it as the court's opinion herein.

Accordingly, plaintiff's claims asserted against defendants Katy Ard and Cadet Franklin are hereby dismissed for failure of plaintiff to serve these defendants within 120 days as mandated by Rule 4(m) of the Federal Rules of Civil Procedure. The motion for partial summary judgment by defendants, Joseph Hooker and Gabriel Hebert (doc. 19), is granted, dismissing plaintiff's claims asserted against those defendants in their official capacities and dismissing all of plaintiff's remaining claims except his claim that defendants Joseph Hooker and Gabriel Hebert subjected him to excessive force on November 6, 2008. Because plaintiff has failed to come forward with competent evidence to refute defendants' assertions relative to the alleged use of force, summary judgment is hereby granted, *sua sponte*, in favor of defendants Joseph Hooker and Gabriel Hebert on the issue of excessive force, and this action shall be dismissed, with prejudice.

Baton Rouge, Louisiana, December 8, 2010.


RALPH E. TYSON, CHIEF JUDGE
MIDDLE DISTRICT OF LOUISIANA