

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

EMMIT L. MCNEILL,)	
)	
Plaintiff,)	
)	
v.)	1:09CV698
)	
PTL. BRANDON SCOTT, et al.,)	
)	
Defendants.)	

ORDER

BEATY, District Judge.

On August 19, 2015, the Recommendation of the United States Magistrate Judge [Doc. #63] was filed and notice was served on the parties pursuant to 28 U.S.C. § 636(b). In the Recommendation, the Magistrate Judge recommended that Defendants Scott and Cleary's Motion for Summary Judgment [Doc. #52] be denied and that Defendants Grady and Rodger's Motion for Summary Judgment [Doc. #54] be granted as to Plaintiff's Eighth Amendment and official capacity claims¹ and denied as to Plaintiff's bystander liability claims. No objections were filed within the time limits prescribed by § 636.

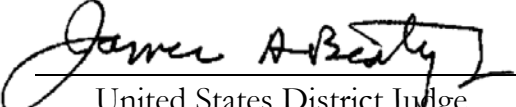
In the absence of objections, this Court reviews the Recommendation only for clear error. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005); Fed. R. Civ. P. 72 advisory committee's note. The Court has appropriately reviewed the Recommendation. Having done so, the Court finds that no clear error exists and that the

¹ As noted in the Recommendation, "[a]n official capacity suit represents a suit against the governmental entity" rather than the individuals named in the suit. [Doc. #63 at 15]. Regardless of how Plaintiff pleaded this part of his action, the Court will grant Defendants Grady and Rodger's motion with respect to the official capacity claims for the reasons stated in the Recommendation. [See Doc. #63 at 15-16].

Recommendation should be adopted. The Magistrate Judge's Recommendation [Doc. #63] is therefore affirmed and adopted for the reasons set forth therein.

IT IS THEREFORE ORDERED that Defendants Scott and Cleary's Motion for Summary Judgment [Doc. #52] is DENIED. IT IS FURTHER ORDERED that Defendants Grady and Rodger's Motion for Summary Judgment [Doc. #54] is GRANTED as to Plaintiff's Eighth Amendment and official capacity claims and is DENIED as to Plaintiff's bystander liability claims.

This, the 22nd day of September, 2015.


United States District Judge