

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

DANIEL EARL WILBANKS,)	
)	
Plaintiff,)	
)	
v.)	1:13CV167
)	
C/O ROBBIE SIMMONS,)	
)	
Defendant.)	

RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

On August 8, 2014, the undersigned United States Magistrate Judge ordered that action on Defendant's Motion for Summary Judgment (Docket Entry 20) be deferred to give Plaintiff an opportunity to file a validly executed affidavit in support of his opposition to said Motion. (Docket Entry 29 at 20.) Plaintiff has now submitted an affidavit that complies with 28 U.S.C. § 1746. (See Docket Entry 30.) Furthermore, for the reasons set out in the previous Order (see Docket Entry 29 at 13-19), Plaintiff's Affidavit would allow a fact finder to conclude that Defendant intentionally applied force to Plaintiff in an unnecessary and malicious fashion in contravention of the Eight Amendment.

IT IS THEREFORE RECOMMENDED that Defendant's Motion for Summary Judgment (Docket Entry 20) be denied.

/s/ L. Patrick Auld
L. Patrick Auld
United States Magistrate Judge

August 18, 2014