

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

JIMMIE A. WHEELER,)	
)	
Plaintiff,)	
)	
-vs-)	Case No. CIV-16-893-F
)	
FORREST PERRY, et al.,)	
)	
Defendants.)	

ORDER

United States Magistrate Judge Shon T. Erwin issued a Report and Recommendation on October 11, 2016 (doc. no. 11), recommending this court (1) dismiss, with prejudice, any claim against the Norman Police Department and claims against defendant Forrest Perry for battery, intentional infliction of emotional distress and excessive force on the basis of res judicata; (2) dismiss, without prejudice, plaintiff's claims against the City of Norman for failure to state a claim, and (3) conclude that plaintiff has stated a valid claim against defendant, Forrest Perry, in both his individual capacity and his official capacity, for violation of plaintiff's equal protection rights. Plaintiff was advised of his right to object to the Report and Recommendation by October 28, 2016 and that failure to make timely objection waives the right to appellate review of both factual and legal questions therein contained.

Upon motion, the court granted plaintiff two extensions of time to file an objection to the Report and Recommendation. *See*, doc. nos. 13 and 15. Plaintiff's objection was ultimately due on December 28, 2016. In its order granting the final extension of time, the court again advised plaintiff that failure to make a timely

objection to the Report and Recommendation waives the right to appellate review of both factual and legal questions therein contained. *See*, doc. no. 15.

To date, plaintiff has not objected to the Report and Recommendation. With no objection filed within the time prescribed, the court accepts, adopts and affirms the Report and Recommendation in its entirety.

Accordingly, the Report and Recommendation issued by United States Magistrate Judge Shon T. Erwin on October 11, 2016 (doc. no. 11) is **ACCEPTED**, **ADOPTED** and **AFFIRMED**.

Any claim against the Norman Police Department and the claims against defendant, Forrest Perry, for battery, intentional infliction of emotional distress and excessive force are **DISMISSED WITH PREJUDICE** on the basis of res judicata.

Plaintiff's claims against the City of Norman are **DISMISSED WITHOUT PREJUDICE** for failure to state a claim upon which relief may be granted.

Plaintiff has stated a valid claim against defendant, Forrest Perry, in both his individual capacity and his official capacity, for violation of plaintiff's equal protection rights.

DATED January 11, 2017.


STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE