

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION**

**ROCCO FUNARI**

**Plaintiff**

v.

**JASON SMITH, ET AL.**

**Defendants**



**Case No. 5:19cv166**

**ORDER GRANTING DEFENDANTS’ PARTIAL MOTION TO DISMISS**

Plaintiff Rocco Funari, an inmate proceeding *pro se*, filed the above-styled and numbered civil action complaining of alleged violations of his constitutional rights. The case was referred to the United States Magistrate Judge in accordance with 28 U.S.C. § 636.

The Defendants have filed a partial motion to dismiss concerning three specific claims, these being Plaintiff’s claim that Major Sisson failed to protect him from excessive uses of force on July 25 and October 5, 2019; Defendants Smith, Richardson, Franchiseur, Bates, Shaw, and Berg harassed and retaliated against him in violation of the 14th Amendment; and Defendants Smith, Richardson, Bates, Sisson, Franchiseur, and Estrada engaged in a conspiracy to cover up the use of force with false statements. The Defendants also contended that the Eleventh Amendment barred any claims for monetary damages against them in their official capacity. Plaintiff filed a response to the motion to dismiss.

After review of the pleadings, the Magistrate Judge issued a Report recommending that the motion to dismiss be granted. Plaintiff received a copy of this Report on July 28, 2021, but has filed no objections; accordingly, he is barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. *Duarte v. City of Lewisville, Texas*, 858 F.3d 348, 352 (5th Cir. 2017).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge’s Report are filed, the standard of review is “clearly erroneous, abuse of discretion and contrary to law.”) It is accordingly

**ORDERED** that the Report of the Magistrate Judge (Docket No. 25) is **ADOPTED** as the opinion of the District Court. It is further

**ORDERED** that the Defendants’ partial motion to dismiss (Docket No. 11) is **GRANTED**. The Plaintiff’s claims against Major Sisson, the claims for retaliation and harassment against the Defendants Smith, Richardson, Franchiseur, Bates, Shaw, and Berg, and the claim of a conspiracy to cover up the use of force against the Defendants Smith, Richardson, Bates, Sisson, Franchiseur, and Estrada are **DISMISSED WITH PREJUDICE**. The Defendants Major Sisson and Lt. Estrada are **DISMISSED** as parties to the lawsuit. Any claims for monetary damages against the Defendants in their official capacities are **DISMISSED WITH PREJUDICE**. The dismissal of these claims and Defendants shall no effect upon the remaining claims and defendants in the case.

**SIGNED this 7th day of September, 2021.**

  
ROBERT W. SCHROEDER III  
UNITED STATES DISTRICT JUDGE