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IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS

LUFKIN DIVISION

DANNY LEWIS HATCHET §

v. § CIVIL ACTION NO. 9:09cv80

MAJOR BARRON, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE AND ENTERING FINAL JUDGMENT

The Plaintiff Danny Hatchet, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights during his confinement in the Nacogdoches County Jail. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

On May 19, 2009, Hatchet was ordered to file an amended complaint setting out his claims with more factual specificity. *See, e.g.,* Gallegos v. State of Louisiana Code of Criminal Procedures Art. 658 Paragraph A and C(4), 858 F.2d 1091 (5th Cir. 1988) (*pro se* plaintiff should be accorded leniency and permitted to amend his complaint where a potential ground for relief may exist). When no amended complaint was forthcoming, the Magistrate Judge issued a Report on June 24, 2009, recommending that the lawsuit be dismissed without prejudice for failure to prosecute or to obey an order of the Court. Because such a dismissal could operate as a dismissal with prejudice as to some or all of Hatchet's claims, the Magistrate Judge further recommended that the statute of limitations be suspended until 60 days after the date of entry of final judgment in the case. *See* Mills v. Criminal District Court No. 3, 837 F.2d 677 (5th Cir. 1988); Rodriguez v. Holmes, 963 F.2d 799 (5th Cir. 1992).

A copy of the Magistrate Judge's Report was sent to Hatchet at his last known address, return receipt requested, but was returned marked "refused," and no objections have been received; accordingly, Hatchet 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.

<u>Douglass v. United Services Automobile Association</u>, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc).

The Court has carefully reviewed the pleadings and documents in this case, as well as the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED without prejudice for failure to prosecute or to obey an order of the Court. It is further

ORDERED that the statute of limitations on Hatchet's claims is hereby SUSPENDED for a period of 60 days following the date of entry of final judgment in this case. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

SIGNED this the 4 day of August, 2009.

Thad Heartfield

United States District Judge