

United States District Court  
Southern District of Texas

**ENTERED**

December 05, 2023

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
VICTORIA DIVISION**

**MARK CLIFF SCHWARZER,**

**Plaintiff,**

**VS.**

**DALE WAINWRIGHT, BRYAN  
COLLIER, JENNIFER SMITH, LARRY  
MILES, E. F. DEAYALA, MOLLY  
FRANCIS, FAITH JOHNSON, SICHAN  
SIV, ERIC NICHOLS, RODNEY  
BURROW, BOBBY LUMPKIN,  
LEONARD ECHESSA, ARICA D.  
FLORES, O'DANIEL PATRICK and  
DERRELYNN PERRYMAN,**

**Defendants.**

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**Civil Case No. 6:18-CV-00034**

**ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the November 7, 2023 Memorandum and Recommendation (“M&R”) prepared by Magistrate Judge Mitchel Neurock. (Dkt. No. 84). Magistrate Judge Neurock made findings and conclusions and recommended that Defendants O’Daniel, Perryman, Miles, DeAyala, Francis, Johnson, Siv, Nichols, and Burrow’s Motion to Dismiss, (Dkt. No. 83 at 6), be granted. (Dkt. No. 84).

“Plaintiff’s only remaining claim in this action is his First Amendment claim against Defendants in their official capacities for declaratory and injunctive relief based on the provisions of TDCJ’s correspondence policy set forth in BP-03.91.” (Dkt. No. 84 at 4). Judge Neurock recommends that Defendants’ motion to dismiss under Rule 12(h)(3) be granted, and that Plaintiff’s remaining claim for declaratory and injunctive relief based

on the provisions of BP-03.91, against these Defendants in their official capacities, be dismissed without prejudice for lack of subject matter jurisdiction under the mootness doctrine. (*Id.* at 6).

The Parties were provided proper notice and the opportunity to object to the M&R. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). No party filed an objection. As a result, review is straightforward: plain error. *Guillory v. PPG Indus., Inc.*, 434 F.3d 303, 308 (5th Cir. 2005). No plain error appears.

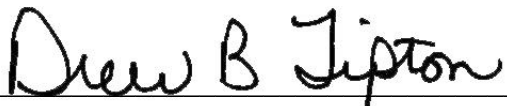
Accordingly, the Court accepts the M&R and adopts it as the opinion of the Court.

It is therefore ordered that:

- (1) Magistrate Judge Neurock's M&R (Dkt. No. 84) is **ACCEPTED** and **ADOPTED** in its entirety as the holding of the Court; and
- (2) Defendants O'Daniel, Perryman, Miles, DeAyala, Francis, Johnson, Siv, Nichols, and Burrow's Motion to Dismiss, (Dkt. No. 83), is **GRANTED**.

It is SO ORDERED.

Signed on December 4, 2023.

  
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DREW B. TIPTON  
UNITED STATES DISTRICT JUDGE