IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

ROBERT PHAROAH HOWARD,	)	**CASE NO. 7:12CV00079**
	)	
Plaintiff,	)	
	)	**ORDER**
v.	)	**(Adopting Report and Recommendation)**
	)	
	)	
J. STATZER, ET AL.,	)	**By: Glen E. Conrad**
	)	**Chief United States District Judge**
Defendants.	)	

In accordance with the accompanying memorandum opinion, it is hereby

ADJUDGED AND ORDERED

as follows:

1. After the court's de novo review of the pertinent portions of the record, plaintiff's objections to the magistrate judge's report and recommendation are **OVERRULED**, and the report and recommendation (ECF No. 160) is **ADOPTED** in its entirety.[1]

2. Plaintiff's motions seeking summary judgment (ECF Nos. 104 & 106) are **DENIED**.

3. Defendant Mathena's motion for summary judgment (ECF No. 91) is **GRANTED**, and the clerk will terminate Mathena as a party to this action.

4. The motion for summary judgment filed by the security defendants (ECF No. 60) is **GRANTED IN PART AND DENIED IN PART**, as follows:

   a. The motion is **GRANTED** as to all claims against Defendant Tate, and the clerk will terminate Defendants Tate as a party to this action; and

   b. The motion is **DENIED** as to plaintiff's Claim (3), alleging use of excessive force on November 7, 2011 by Defendants Messer, Whisenhunt, and Fields.

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[1] The magistrate judge also issued a report and recommendation on September 11, 2013, regarding plaintiff's motions for preliminary injunctive relief, filed August 13 and 23, 2013, and defendants responses thereto. The court will issue a separate opinion and order addressing the September 11 report and any objections.

5. Because the record now indicates that Defendant Head has died after waiving service of process, if plaintiff wishes to pursue his § 1983 claim for monetary damages based on Defendant Head's alleged actions, pursuant to Fed. R. Civ. P. 25(a), he is **DIRECTED** to make a motion within 20 days from entry of this order to substitute an appropriate individual by name as a defendant in Head's place, or the claim regarding Head's alleged actions will be dismissed with prejudice. In the alternative, Howard may move for voluntary dismissal of his claim regarding Head.

6. Pursuant to the report and recommendation as adopted by the court, all claims against any defendant named Payne in connection with the incident on November 7, 2011, are summarily **DISMISSED** under 28 U.S.C. § 1915A(e)(2) as frivolous.

7. As to the claims remaining against Defendants Messer, Whisenhunt, and Fields, this case **SHALL BE SCHEDULED** for trial before a seven-member jury in the United States Courthouse in Big Stone Gap, Virginia, at the court's earliest convenience.

ENTER: This 20th day of September, 2013.

Chief United States District Judge