FILED
2015 Dec-11 PM 01:12
U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION

REGINALD WOODS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case Number: 1:14-cv-00713-MHH-JHE
	)	
UNITED STATES, et al.,	)	
	)	
Defendants	)	
	)	

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff James E. Holmes filed a *pro se* complaint pursuant to *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971), and the Federal Tort Claims Act ("FTCA"), alleging that rights, privileges, or immunities afforded him under the Constitution or laws of the United States were abridged during his incarceration at the Federal Correctional Institution in Talladega, Alabama.[1] (Doc. 1). In accordance with the usual practices of this Court and 28 U.S.C. § 636(b)(2), the complaint was referred to the undersigned magistrate judge for a preliminary report and recommendation. *See McCarthy v. Bronson*, 500 U.S. 136 (1991).

I. Procedural History

The plaintiff alleges that Officer J. Vines violated his rights under the Eighth Amendment to the United States Constitution when, on September 6, 2012, Officer Vines conducted an inappropriate pat down search on the plaintiff. The plaintiff asserts Warden John T. Rathman failed to properly supervise Officer Vines, and that both of these defendants retaliated against

[1] While a 42 U.S.C. § 1983 action challenges the constitutionality of the actions of state officials, a *Bivens* action challenges the constitutionality of the actions of federal officials. Because claims under 42 U.S.C. § 1983 and *Bivens* are similar, courts generally apply § 1983 law to *Bivens* cases. *See Abella v. Rubino*, 63 F.3d 1063, 1065 (11th Cir. 1995).

him when he reported the incident. (Doc. 1).[2] On November 17, 2014, the undersigned entered an Order for Special Report, requiring the defendants to respond to the plaintiff's allegations. (Doc. 13). Defendants thereafter requested and received permission to file a motion to dismiss, in lieu of a special report. (Docs. 18 & 19). On March 18, 2015, the defendants filed a motion to dismiss, arguing that the plaintiff's failure to allege a physical injury or "sexual act" as defined by 18 U.S.C. § 2246(2) requires the plaintiff's claim be dismissed under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. (Doc. 20). On June 26, 2015, the plaintiff responded to the defendants' motion. (Doc. 22).

II. Standard of Review

In considering a motion to dismiss filed pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, a court must determine whether a plaintiff's "[f]actual allegations [are] enough to raise the right to relief above the speculative level . . . on the assumption that all the allegations in the complaint are true." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations omitted). On a motion to dismiss, this court accepts as true all the allegations in the complaint and construes them in the light most favorable to the plaintiff. *Jackson v. BellSouth Telecomms.*, 372 F.3d 1250, 1262–63 (11th Cir. 2004). That factual content must allow the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A complaint, or any claim therein, is subject to dismissal under Rule 12(b)(6) when the allegations, on their face, show that an affirmative defense bars recovery on the claim. *Cottone v. Jenne*, 326 F.3d 1352, 1357 (11th Cir. 2003).

[2] All citations to the record are to the document and page numbers assigned by CM/ECF, the court's electronic filing system.

In the case of a *pro se* plaintiff, the court should construe the complaint more liberally than it would pleadings drafted by lawyers. *Hughes v. Rowe*, 449 U.S. 5, 9 (1980). "Pro se pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed." *Boxer X v. Harris*, 437 F.3d 1107, 1110 (11th Cir. 2006).

III. Discussion

A. Warden Rathman and Officer Vines

In his complaint, the plaintiff asserts Officer Vines subjected him to "'sexual touching/fondling' against my will and without my consent . . ." in violation of the Eighth Amendment and the Prison Rape Elimination Act ("PREA"). (Doc. 1 at 4). The plaintiff seeks to hold Warden Rathman liable for failing to prevent Officer Vines from engaging in such behavior. (*Id.*). The plaintiff further alleges Warden Rathman retaliated against him by not moving him to a different unit, by moving him to a different unit, and by assigning Officer Vines to the unit where the plaintiff was housed. (*Id.* at 5). In his complaint, the plaintiff seeks compensatory and punitive damages, as well as a temporary restraining order.[3] (*Id.*). By motion to amend, the plaintiff requested declaratory judgment on three specific issues.[4] (Doc. 7).

[3]The plaintiff also filed an "Emergency Request for (TRO)." (Doc. 4). The motion for a temporary restraining order, seeking to prevent a transfer to another prison, was denied on June 5, 2014. (Doc. 9). Because Officer Vines was transferred to another prison as of December 14, 2014, no injunctive relief is necessary concerning the plaintiff's future contact with this defendant. (*See* doc. 20-2, ¶ 4, Cruz decl.). Similarly, future concerns regarding Warden Rathman are moot, as he retired from the Bureau of Prisons effective September 20, 2014. (*Id.*, ¶ 5).

[4]As the defendants note, the plaintiff's declaratory judgment issues are really questions of law on which the plaintiff seeks ruling and not truly a cause of action for a declaration of the parties' rights. (*See* doc. 20-1 at 9 n.6). Specifically, he seeks legal rulings on whether the acts complained of violate the terms of the PREA, as set out in 28 C.F.R. §§ 115.5 and 115.64, discussed *infra*.

Finally, the plaintiff reduced the damages sought against Warden Rathman to $1.00, plus punitive damages as a jury saw fit to award.[5] (Doc. 7).

The language of § 1997e(e) of the Prison Litigation Reform Act ("PLRA") applies to the plaintiff's claims under *Bivens*. *See* 42 U.S.C. § 1997e(e). That section provides that: "[n]o Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury or commission of a sexual act (as defined in section 2246 of Title 18)." 42 U.S.C. § 1997e(e). "[T]o avoid dismissal under § 1997e(e), a prisoner's claims for emotional or mental injury must be accompanied by allegations of physical injuries that are greater than de minimis." *Mitchell v. Brown & Williamson Tobacco Corp*., 294 F.3d 1309, 1312-13 (11th Cir. 2002) (citing *Harris v. Garner*, 190 F.3d 1279, 1286-87 (11th Cir.1999), *vacated in part and reinstated in part, Harris v. Garner*, 216 F.3d 970, 984-85 (11th Cir. 2000) (en banc)). Nominal damages are recoverable if a plaintiff establishes a violation of a constitutional right, even without an actual injury. *Boxer X v. Donald,* 169 Fed. Appx. 555, 558 (11th Cir. 2006) (citing *Hughes v. Lott*, 350 F.3d 1157, 1167 (11th Cir. 2003).

Having reviewed the complaint and the applicable law, the undersigned concludes that the plaintiff's claims for compensatory and punitive damages against Officer Vines and Warden Rathman must be dismissed because the plaintiff does not allege that he suffered physical injury or was the victim of a "sexual act" as that term is defined by federal law.[6]

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[5]Punitive damages are not available for claims under the FTCA. *See* 28 U.S.C. § 2674.

[6]18 U.S.C. § 2246 defines a "sexual act" as:

The plaintiff responded to the defendants' motion to dismiss by simply asserting the motion was "frivolous" and "premature." (Doc. 22 at 1). The plaintiff disagrees that the PLRA requires a sexual act to fall within the definitions in 18 U.S.C. § 2246. *Id.* However, quibbling with what the law requires is not sufficient; the plaintiff does not assert that he suffered a physical injury or sexual act as required by the PLRA.

The plaintiff alleges that Officer Vines violated his "private parts" and "personal space" within the confines of his underwear on September 6, 2012, by purposely sticking his "naked" hands inside the plaintiff's boxer style underwear and making a full circle of his "private parts," stroking very near his genitals and reaching around to his buttocks. (Doc. 1 at 12)[7]. The plaintiff later learned Officer Vines had a history of sexually touching other prisoners. (Doc. 1 at 13). As potentially inappropriate as the events described in the plaintiff's complaint may be,

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> (A) contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight;
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> (B) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;
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> (C) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or
>
> (D) the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

18 U.S.C. § 2246(2).

[7]These facts are alleged in a document entitled "Affidavit of Truth and Criminal Complaint," submitted as "Attachment – B" to the plaintiff's complaint. For purposes of the pending motion to dismiss, the court has considered the facts alleged as if they were alleged in the plaintiff's complaint itself.

they are not within the confines of a "sexual act" as defined in 18 U.S.C. § 2246.[8] Construing the allegations in the plaintiff's complaint as true, the plaintiff fails to demonstrate that he suffered a physical injury or sexual act by the events in question. The plaintiff's allegations are more appropriately classified as a "sexual contact," which is insufficient to support a claim for compensatory or punitive damages under *Bivens*. 18 U.S.C. § 2246(3). "Sexual contact" is defined in the statute as follows:

> the term "sexual contact" means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

Id. Because § 1997e(e) specifically requires a physical injury or the conduct defined as a "sexual act," as found in § 2246(2), "sexual contact" as described in § 2246(3) is insufficient to support a claim for damages brought under *Bivens.* Thus, the plaintiff's claims for compensatory and punitive damages against Officer Vines and Warden Rathman are due to be dismissed for failing to allege an injury sufficient for purposes of § 1997e(e).

The court has also considered the plaintiff's claims against Warden Rathman for nominal damages.[9] The Eleventh Circuit's decision in *Hughes v. Lott*, 350 F.3d 1157, 1167 (11th Cir.

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[8]The language "or the commission of a sexual act (as defined in section 2246 of Title 18)" was added to the end of this subdivision pursuant to Pub. L. 113–4, § 1101(b), and became effective March 7, 2013. The plaintiff's claims arose before that effective date; his complaint was filed after the effective date. The court assumes, without deciding, that the amendment would apply to the plaintiff's claims. However, even if the amendment adding "or the commission of a sexual act" did not apply, the plaintiff's claims would still fail because he does not allege he suffered any physical injury, as required in the alternative by § 1997e(e).

[9]In his complaint, the plaintiff stated he sought $25,000 from defendant Vines for his *Bivens* claims and compensatory and punitive damages. (Doc. 1, at 5-6). The plaintiff sought the same relief from defendant Rathman, but reduced that sum to "$1.00" plus punitive damages in his motion to amend. (Doc. 7).

2003), allows a case to proceed even though the plaintiff fails to allege a physical injury or "sexual act," as defined above, if the complaint seeks only nominal damages. Construing the plaintiff's request for $1.00 from Warden Rathman as nominal damages, the plaintiff's Eighth Amendment failure to protect claim against Warden Rathman survives the physical injury or sexual act requirement of § 1997e(e).

However, even given that a claim for nominal damages is brought against Warden Rathman, the plaintiff must still establish that the conduct in question was more than "de minimus" to state a claim of constitutional proportion. A routine, non-constitutional invoking pat-down is understood to include a search of the groin area. *See, e.g., Terry v. Ohio*, 392 U.S. 1, 17 n. 13 (1968) (describing a routine pat-down as involving "the groin and area about the testicles"). Federal courts that have considered the issue have ruled consistently that brief, isolated contact with an inmate's genitals during a pat-down search, such as the contact the plaintiff describes, does not state an Eighth Amendment violation. *See e.g., Chavis v. U.S.,* 597 Fed.Appx. 38, 41 (3rd Cir. 2014) ("Accepting as true Chavis's description of the search, it appears that Officer Sassaman simply performed a thorough pat-down search that included Chavis's genital area . . . even if Officer Sassaman's actions were improper, this isolated incident with no aggravating factors does not rise to the level of an Eighth Amendment violation."); *Washington v. Harris,* 186 Fed.Appx. 865, 866 (11th Cir. 2006) (holding that the inmate failed to state an Eighth Amendment claim where a prison guard "crept up behind [the prisoner inmate] while he was working," grabbed his genitals, kissed him on the mouth, and threatened to perform oral sex on him); *Jackson v. Madery*, 158 Fed.Appx. 656, 661 (6th Cir. 2005) (holding that the plaintiff's allegations that a guard grabbed and rubbed his buttocks in a degrading manner during a shakedown in the food area was insufficient to establish an Eighth Amendment violation);

Sherwood v. Schofield, 2013 WL 3943542 at *5 (E.D. Tenn. July 30, 2013) (groping of genitals during one, routine pat-down search is insufficient to state claim); *Young v. Brock*, 2012 WL 385494, at *4 (D.Col. Feb. 7, 2012) (where officer allegedly fondled and squeezed inmate's genitals during pat-down search, "caselaw is clear that such a single pat-down search cannot be said to violate the Constitution") (citing similar cases); *Tuttle v. Carroll Co. Det. Ctr*., 2010 WL 2228347, at *2 (E.D.Ky. June 2, 2010) (inmate's privacy and dignity were not violated when officer grabbed and squeezed his testicles during single pat-down search). See also *Moton v. Walker*, 545 Fed.Appx. 856, 860 (11th Cir. 2013) ("To prove an Eighth Amendment violation based on sexual abuse, a prisoner must show that he suffered an injury that was objectively and sufficiently serious and that the prison official had a subjectively culpable state of mind.") (citing *Boxer X v. Harris*, 437 F.3d at 1111; *Boddie v. Schnieder,* 105 F.3d 857, 861 (2nd Cir. 1997) (The "small number of incidents in which [a plaintiff is] verbally harassed, touched, and pressed against without his consent ... are despicable and, if true, [ ] may potentially be the basis of state tort actions. But they do not involve a harm of federal constitutional proportions as defined by the Supreme Court."). While the severe or repetitive sexual abuse of a prisoner by a prison official can violate the Eighth Amendment, *Boxer X v. Harris,* 437 F.3d at 1111, the events the plaintiff alleges do not rise to that level. Because the facts of this case are clearly within conduct which has been found to be de minimus, the plaintiff's claim against Warden Rathman for nominal damages is due to be dismissed. *See Washington*, 186 Fed.Appx. at 866 ("Assaults that result in only de minimus harm do not rise to the level of constitutional infractions unless the behavior of the officer in question can be deemed 'repugnant to the conscience of mankind. Although Washington alleges that he was subjected to an offensive and unwanted touching, he alleges only momentary pain, 'psychological injury,' embarrassment, humiliation, and fear.

These de minimus injuries do not rise to the level of constitutional harms, and Deas's conduct, while inappropriate and vulgar, is not repugnant to humanity's conscience.") (internal citations omitted).

The court has also considered the plaintiff's reliance on the Prison Rape Elimination Act ("PREA"), 42 U.S.C. § 15601, *et seq*., in support of his claim that the actions of Officer Vines were not within the confines of a "pat down." Regardless of whether the PREA prohibits such conduct, the PREA does not establish a private cause of action. *See Krieg v. Steele,* 599 Fed.Appx. 231, 232-233 (5th Cir. 2015), citing *Diamond v. Allen*, 2014 WL 6461730, at *4 (M.D.Ga. Nov.17, 2014); *Amaker v. Fischer*, 2014 WL 4772202, at *14 (W.D.N.Y. Sept. 24, 2014) (holding that the PREA cannot support such a cause of action by an inmate); *Simmons v. Solozano*, 2014 WL 4627278, at *4 (W.D.Ky. Sept.16, 2014) (holding that the PREA creates no private right of action). Nothing within the PREA suggests Congress intended to create a cause of action for inmates to sue prison officials for non-compliance with that Act. *Whitt v. Yancy*, 2015 WL 3456600, at *3 n.11 (E.D.Va. May 29, 2015) . The plaintiff has cited no case which allows a prisoner claim under the PREA to proceed; therefore, any claim raised under the PREA is due to be dismissed as frivolous.

The plaintiff further alleges Warden Rathman failed to protect him from Officer Vines. (Doc. 1 at 4). In support of this claim, the plaintiff relies on the PREA and the Eighth Amendment. As stated above, no private cause of action is provided by the PREA, thus the court turns to the claim under the Eighth Amendment.

The Eighth Amendment "imposes [a] dut[y] on [prison] officials" to "take reasonable measures to guarantee the safety of the inmates." *Farmer v. Brennan*, 511 U.S. 825, 832 (1994) (alterations added). A prison official violates the Eighth Amendment "when a substantial risk of

serious harm, of which the official is subjectively aware, exists and the official does not respond reasonably to the risk." *Carter v. Galloway*, 352 F.3d 1346, 1349 (11th Cir. 2003) (internal quotation marks omitted) (alterations adopted); *see also Farmer*, 511 U.S. at 828 ("A prison official's 'deliberate indifference' to a substantial risk of serious harm to an inmate violates the Eighth Amendment."). Thus, "a plaintiff must produce sufficient evidence of (1) a substantial risk of serious harm; (2) the defendants' deliberate indifference to that risk; and (3) causation." *Goodman v. Kimbrough*, 718 F.3d 1325, 1331 (11th Cir. 2013) (internal quotation marks omitted).

Because the plaintiff has failed to allege "serious harm" sufficient to survive a motion to dismiss, the court need go no further in this analysis. In other words, without allegations that the plaintiff suffered a "physical injury" or "sexual act" as a result of Officer Vines' actions, and with only de minimus injuries, if any, there is no basis for the court to examine whether a substantial risk of serious harm even existed. Additionally, the plaintiff alleges just one similar incident, almost a year before, of which Warden Rathman should have been aware, to put him on notice that Officer Vines might, in the future, cause harm to an inmate.[10]

Finally, Warden Rathman cannot be held liable under *Bivens* for the actions of Officer Vines solely based on his role as supervisor. Supervisory officials are not liable through respondeat superior or vicarious liability for the unconstitutional acts of subordinates. *Gonzalez v. Reno*, 325 F.3d 1228, 1234 (11th Cir. 2003). Rather, a supervisor may be liable under *Bivens*

[10]The plaintiff asserts Warden Rathman "had knowledge" of the substantial risk of further harm to inmates from Officer Vines because Warden Rathman had seen prior complaints of sexual misconduct by Officer Vines. (Doc. 1, at 4). Specifically, the plaintiff points to one prior complaint by an inmate on November 21, 2011. (*Id.*, at 13). The court was not provided a copy of this complaint.

if "a reasonable person in the supervisor's position would have known that his conduct infringed the constitutional rights of the plaintiff . . . and his conduct was causally related to the constitutional violation committed by his subordinate." *Greason v. Kemp*, 891 F.2d 829, 836 (11th Cir. 1990). A causal connection may arise when a history of widespread abuse puts a responsible supervisor on notice of the need to correct an alleged deprivation, and he fails to do so; when a supervisor's improper custom or policy results in deliberate indifference to constitutional rights; or when facts suggest that a supervisor orders his subordinates to act unlawfully or knows they will act unlawfully and fails to stop them. *Gonzalez*, 325 F.3d at 1234-35. Here, the plaintiff fails to allege any facts which could hold Warden Rathman liable for constitutional deprivations based on Officer Vines' actions. Therefore, any claim against Warden Rathman in his supervisory capacity is due to be dismissed.

B. United States

The plaintiff seeks to hold the United States liable for Officer Vines' actions based on the Federal Tort Claims Act ("FTCA"). (Doc. 1 at 4). The FTCA, 28 U.S.C. §§ 1346, constitutes a limited waiver of the sovereign immunity of the United States. *Lewis v. U.S.*, – Fed.Appx. – , 2015 WL 3940792 (11th Cir. June 29, 2015) (citing *Suarez v. United States*, 22 F.3d 1064, 1065 (11th Cir. 1994)). The FTCA has adopted the same definition as the PLRA in regard to the requirement of a "physical injury" or "sexual act" to allow the case to proceed. *See* 28 U.S.C. § 1346(b)(2). To be actionable under the FTCA, the conduct complained of must result in a physical injury or constitute "sexual act," as defined by 18 U.S.C. § 2246(2). 28 U.S.C. § 1346(b)(2). The fact that § 2246 clearly differentiates between "sexual conduct" and "sexual acts," and the FTCA expressly requires a "sexual act" for an incarcerated plaintiff to maintain an

action, makes clear that the conduct about which the plaintiff complains does not fall within the scope of conduct covered by the FTCA.

Moreover, although the plaintiff alleges Officer Vines' actions on September 17, 2012, constitute retaliation for which the United States is liable, the plaintiff fails to allege any event that could be construed as retaliation that happened on such date. The plaintiff alleges as follows:

> The actions of Officer Vines on 9/17/12 constitute "retaliation" for reporting his abuse under (PREA) to the proper authorities within the institution. Under the (FTCA) the defendant United States is liable to the Plaintiff for the unlawful actions of Officer Vines . . . .

(Doc. 1 at 4). In an "Affidavit of Truth" submitted as an attachment to the complaint, a non-party inmate alleges that on September 17, 2012, during an investigation as to whether Officer Vines was "sexually touching inmates," Officer Vines made "comments about 'this is tell-a-dega, because they are telling on me now." (Doc. 1 at 17). Nothing in Officer Vines' alleged comment, as sworn to by a non-party, is retaliatory against the plaintiff.

The plaintiff also asserts that the United States is liable for Warden Rathman's violation of the plaintiff's Eighth Amendment rights because Warden Rathman "had knowledge" of the substantial risk of further harm to inmates from Officer Vines due to Rathman having seen prior complaints accusing Officer Vines of sexual misconduct. (Doc. 1 at 4). As set forth above, the plaintiff's loose reference to another complaint by a different inmate almost a year before the events in question here is simply insufficient to establish knowledge on the part of Warden Rathman that the plaintiff was at risk of a serious injury at the hands of Officer Vines.

The plaintiff further asserts Warden Rathman's actions on September 14, 2012, in failing to separate the plaintiff from his abuser, and on October 19, 2012, in moving the plaintiff away

from his abuser, constitute retaliation.[11] However, as with Officer Vines, the plaintiff alleges no facts which occurred on the specified dates from which the court could even infer an action occurred in retaliation for the plaintiff' complaints.

IV. Recommendation

Accordingly, for the reasons stated above, the undersigned **RECOMMENDS** the plaintiff's complaint be **DISMISSED WITH PREJUDICE**, pursuant to Fed. R. Civ. P. 12(b)(6) and 28 U.S.C. § 1915(e)(2)(B)(ii) for failing to state a claim upon which relief can be granted.

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[11] These allegations read, in relevant part:

> The actions of Warden John T. Rathman on 9/14/12 (24 hours after receipt of report) until the very date of this filing constitute "retaliation" for subjecting me to be in close quarters with my abuser for an additional (23) days by means of his failure to separate me from my abuser. The actions of Warden Rathman on 10/19/12 constitute "retaliation" by the means of a "two-man cell" to "three-man cell" move from Gamma - B unit into Beta - A unit in a long over-due "separation from my abuser" who remained assigned to Gamma - B; this move was "involuntary"' according to staff and was for my protection, however it was nothing more than a "superficial" showing to satisfy the (Regional - SIS) whom I had made a (PREA) report to on 10/17/12, because Officer Vines has been assigned to Beta - A unit as a post on several occasions beginning on 4/9/13, as well as being "currently" assigned to Beta - B for (2) days each week this quarter as a show of force and intimidation to the entire prison that is in violation of my 8th Amendment protections under the Constitution of the United States of America, and the State of Alabama common law.

(Doc. 1 at 5) (emphasis in original). From these allegations, the plaintiff appears to complain that Warden Rathman retaliated against him when he filed the report because Warden Rathman did not move him to a different unit on September 14, 2012, and that Warden Rathman retaliated against him when Warden Rathman did move him to a different unit on October 19, 2012, because in April 2013 Officer Vines was reassigned to the same unit as the plaintiff. There is no evidence the failure to move the plaintiff, the moving of the plaintiff, or Officer Vines' reassignment Vines had any connection to the plaintiff's complaint that Officer Vines wrongfully touched him.

V. Notice of Right to Object

Any party who objects to this report and recommendation must, within fourteen (14) days of the date on which it is entered, file specific written objections with the clerk of this court. **Any objections to the failure of the magistrate judge to address any contention raised in the petition also must be included.** Failure to do so will bar any later challenge or review of the factual findings of the magistrate judge, except for plain error. *See* 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140 (1985), *reh'g denied*, 474 U.S. 1111 (1986); *Dupree v. Warden*, 715 F.3d 1295, 1300 (11th Cir. 2013).

To challenge the findings of the magistrate judge, a party must file with the clerk of the court written objections which shall specifically identify the portions of the proposed findings and recommendation to which objection is made and the specific basis for objection. Any objections to the failure of the magistrate judge to address any contention raised in the complaint must also be included. Objections not meeting the specificity requirement set out above will not be considered by a district judge. The filing of objections is not a proper vehicle through which to make new allegations or present additional evidence. Furthermore, it is not necessary for a party to repeat legal arguments in objections. A copy of the objections must be served upon all other parties to the action.

On receipt of objections meeting the specificity requirement set out above, a United States District Judge shall make a *de novo* determination of those portions of the report, proposed findings, or recommendation to which objection is made and may accept, reject, or modify in whole or in part, the findings or recommendations made by the magistrate judge. The district judge, however, need conduct a hearing only in his discretion or if required by law, and may consider the record developed before the magistrate judge, making his own determination on the

basis of that record. The district judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions. Objections not meeting the foregoing specificity requirement will not be considered by a district judge.

A party may not appeal a magistrate judge's recommendation directly to the United States Court of Appeals for the Eleventh Circuit. Appeals may be made only from a final judgment entered by or at the direction of a district judge.

The Clerk is **DIRECTED** to serve a copy of this report and recommendation upon the plaintiff.

DONE this 11th day of December 2015.

JOHN H. ENGLAND, III
UNITED STATES MAGISTRATE JUDGE