

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
COLUMBUS DIVISION**

ISHMAEL K. WHITAKER,	:	
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Plaintiff,	:	
	:	
VS.	:	NO. 4:22-CV-00038-CDL-MSH
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Sergeant JEFFERSON, <i>et al.</i> ,	:	
	:	
Defendants.	:	
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**REPORT AND RECOMMENDATION**

Pending before the Court is Defendants Cole and Jefferson’s motion for summary judgment (ECF No. 33). For the reasons explained below, it is recommended that Defendants’ motion be granted.

**PROCEDURAL BACKGROUND**

The present action is brought under 42 U.S.C. § 1983 and arises out of Plaintiff Ishmael Whitaker’s prior confinement at the Muscogee County Jail (“MCJ”) in Columbus, Georgia. Compl. 3, ECF No. 1. Whitaker contends Cole was deliberately indifferent to his risk of suicide by not responding appropriately after he advised her he was suicidal. *Id.* at 7. He alleges Jefferson used excessive force by punching him and elbowing him while taking a blanket away from him in retaliation for Whitaker filing grievances. *Id.* at 8-9. He also asserts that Jefferson’s taking of the blanket violated his right to bodily privacy because he was forced to remain naked in a cell with other prisoners for nine hours. *Id.* at 10.

Following preliminary screening, Whitaker's claims against Cole and Jefferson were allowed to proceed for further factual development.<sup>1</sup> Order 14, June 24, 2022, ECF No. 11. Cole and Jefferson answered the complaint on August 29, 2022, and moved for summary judgment on December 27, 2022 (ECF Nos. 26, 33). On December 28, 2022, the Court mailed notice to Whitaker at MCJ—the address on file—of his right to respond to the motion within thirty days. Order 2-3, ECF No. 34. The order was returned as undeliverable because Whitaker was no longer in jail. Mail Returned, ECF No. 42. Subsequent court orders and notifications have likewise been returned as undeliverable, and Whitaker has not notified the Court of a new address (ECF Nos. 48-49). The Court had previously informed Whitaker of his obligation to inform the Court of any address change.<sup>2</sup> Order 4, Mar. 11, 2022, ECF No. 4. Defendants' motion is ripe for review.

### **I. Summary Judgment Standard**

Summary judgment may be granted only “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). In determining whether a *genuine* dispute of *material* fact exists to defeat a motion for summary judgment, the evidence is viewed in the light most favorable to the party opposing summary judgment, drawing all justifiable inferences in

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<sup>1</sup> Whitaker also has a pending claim against Dr. Patillo, MCJ's doctor, for deliberate indifference, but that claim is not addressed in this recommendation.

<sup>2</sup> Whitaker has filed multiple lawsuits in this district, and as the Court noted previously, “his failure to keep the Court and parties apprised of his current address is a common theme. It is not the Court's responsibility to track litigants down to determine their current location for service.” *Whitaker v. White*, No. 4:21-cv-00164-CDL-MSH, 2022 WL 17826482, at \*2 n.2 (M.D. Ga. Oct. 13, 2022), *recommendation adopted by* 2022 WL 17823982 (M.D. Ga. Dec. 20, 2022).

the opposing party's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 255 (1986). A fact is *material* if it is relevant or necessary to the outcome of the suit. *Id.* at 248. A factual dispute is *genuine* if the evidence would allow a reasonable jury to return a verdict for the nonmoving party. *Id.*

The party seeking summary judgment “always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (internal quotation marks omitted). If the movant meets this burden, the burden shifts to the party opposing summary judgment to go beyond the pleadings and present specific evidence showing that there is a genuine issue of material fact, or that the movant is not entitled to judgment as a matter of law. *Id.* at 324-26. This evidence must consist of more than conclusory allegations. *See Avirgan v. Hull*, 932 F.2d 1572, 1577 (11th Cir. 1991). In sum, summary judgment must be entered “against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.” *Celotex*, 477 U.S. at 322.

## **II. Plaintiff's Failure to Respond**

Whitaker did not respond to Defendants' motion for summary judgment or their statement of facts. The Local Rules of the United States District Court for the Middle District of Georgia (hereinafter “Local Rules”) provide:

The respondent to a motion for summary judgment shall attach to the response a separate and concise statement of material facts, numbered separately, to which the respondent contends there exists a genuine dispute to be tried. Response shall be made to each of the movant's numbered material facts. All material facts contained in the movant's statement which are not specifically controverted by specific citation to particular parts of materials in the record shall be deemed to have been admitted, unless otherwise inappropriate.

M.D. Ga. L. R. 56. Because Whitaker did not respond to the summary judgment motion, and thus did not specifically controvert any material facts set forth in Defendants' statement of undisputed material facts (ECF No. 33-2), the facts set forth therein are deemed admitted where appropriate.

The Court, however, "cannot base the entry of summary judgment on the mere fact that the motion was unopposed, but, rather, must consider the merits of the motion." *United States v. One Piece of Real Property Located at 5800 SW 74th Ave., Miami, Fla.*, 363 F.3d 1099, 1101 (11th Cir. 2004). In considering the merits of a motion for summary judgment, even an unopposed motion, a court must, at least, "review all of the evidentiary materials submitted in support of the motion for summary judgment." *Id.* at 1101-02. In other words, the court cannot simply accept the facts stated in a moving party's statement of material facts as true, but must also review the movant's citations to the record and confirm that there are no issues of material fact. *Id.* at 1103 n.6.

Here, the evidentiary material in the record consists of the affidavits submitted by Cole and Jefferson and Whitaker's deposition testimony. It does not include the allegations in Whitaker's unverified complaint, which cannot be considered in opposition to a summary judgment motion. *Jacoby v. Mack*, 755 F. App'x 888, 894 n.8 (11th Cir. 2018)

(per curiam). It also does not include a statement made by a fellow inmate that was attached to Whitaker's complaint because, although it was labeled as a "sworn affidavit," it included no language indicating it was signed under oath before a notary or subscribed as true under penalty of perjury as provided by 28 U.S.C. § 1746. Compl. 15; *Roy v. Ivy*, 53 F.4th 1338, 1347-48 (11th Cir. 2022).

### **III. Undisputed Material Facts**

While confined at MCJ, Whitaker masturbated "all the time." Pl.'s Dep. 68:7-8. He had been trained by mental health professionals that when he felt like hurting somebody, he should let people know, go to the suicide cell, and "jack off" to release his anger. *Id.* at 68:19-69:4. He was a compulsive masturbator who was often charged for doing so in front of MCJ staff, medical staff, and other inmates. Defs.' Statement of Undisputed Material Facts ("SMF") ¶ 10, ECF No. 33-2; Jefferson Decl. ¶ 4. Whitaker specifically testified to one occasion when he wanted to "jack off" on a particular nurse and was seen by Cole—a deputy assigned to the jail—while masturbating and was "locked up." Pl.'s Dep. 83:24-84:14. Whitaker's constant masturbation resulted in conflict both with his fellow inmates and staff. *Id.* at 70:8-12; Cole Decl. ¶ 8, ECF No. 33-3; Jefferson Decl. ¶ 4. He was also often placed in High Suicide Precaution ("HSP") cells due to "frequent suicidal tendencies, which were evidenced by numerous cuts on his arms." Cole Decl. ¶ 4. The perception of MCJ staff was that Whitaker used threats of suicide as a means of getting out of general population into an HSP cell so he would have his own cell and see more female nurses. Cole Decl. ¶ 9; Jefferson Decl. ¶ 5; SMF ¶ 5.

On or around January 31, 2022, at approximately 7:00 a.m., Whitaker told Cole that

he was feeling suicidal.<sup>3</sup> Pl.’s Dep. 25:18-25, 89:2-4. Cole responded there was nothing she could do about it. *Id.* at 89:4-5. She did not let a member of the mental health staff know about the threat, even though she knew about his mental health condition. *Id.* at 26:1-6, 43:16-44:3, 89:4-24. Approximately two hours after his conversation with Cole, Whitaker cut himself on the arms four times with a piece of metal, though he does not remember the exact tool he used. *Id.* at 32:16-33:16, 77:20-78:3. He was taken to the medical unit, the wounds were cleaned, and “something” was put on them. *Id.* at 78:8-11. At his deposition, Whitaker showed he had “dozens” of cuts on his arms from both before and after the incident with Cole. *Id.* at 26:8-15, 34:13-35:9.

After he was treated in the medical unit, Whitaker was apparently taken to an HSP cell.<sup>4</sup> While most inmates placed in the HSP cells were provided a blanket and a smock, Whitaker was only provided a blanket. Pl.’s Dep. 60:25-61:5, 129:6-21. The HSP cell was not to Whitaker’s liking because instead of being by himself, he had to share it with four other inmates. *Id.* at 70:11-25. While Whitaker was in the HSP cell, a female nurse reported to Jefferson—a sergeant working at the jail—that Whitaker had removed his smock, was naked under his blanket, and would expose himself to her when she walked by. Jefferson Decl. ¶ 6; SMF ¶ 7. Jefferson then went to Whitaker’s cell to take the blanket

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<sup>3</sup> Cole denies Whitaker ever told her this and states her calendar shows her being off work on January 31, 2023. Cole Decl. ¶ 5. Of course, at the summary judgment stage, the Court must accept Whitaker’s version as true. Whitaker testified at his deposition that the date of the incident alleged in the complaint could be “off a day or two.” Pl.’s Dep. 30:11-12.

<sup>4</sup> The timing is not clear from his deposition testimony, but in his complaint, Whitaker stated he was taken to an HSP cell after being treated in the medical unit on January 31, 2022. Compl. 8.

away from him. Jefferson Decl. ¶ 7. According to Whitaker, when Jefferson arrived at his cell, he complained to Whitaker about his filing grievances, “jacking [his] dick,” and getting “everybody around here in trouble.” Pl.’s Dep. 82:18-20. He told Whitaker if he did not give him the blanket, he would take it. *Id.* at 82:21-22. Whitaker testified he was “like, man, I’m not giving you my blanket, man.” *Id.* at 73:8-9. He resisted Jefferson’s attempt to take the blanket. SMF ¶ 13. Jefferson then—in what Whitaker described as a “military” technique—punched and elbowed him and snatched the blanket. Pl.’s Dep. 73:4-20, 82:21-22. Whitaker suffered no injuries as far as “blood or nothing” or a “bust[ed] lip or black [] eye or none of that there,” and he does not remember requesting medical treatment. *Id.* at 73:24-75:8, 75:13-14. It was not until two days later he felt “soreness in the head.” *Id.* at 75:10-11. Because Whitaker had no smock, Jefferson’s taking of the blanket left him naked in the cell with the other inmates. *Id.* at 27:4-14, 57:10-23. Whitaker remained that way for nine hours before he was taken out of HSP (Whitaker had signed himself out of mental health) and returned to general population. *Id.* at 27:17, 76:16-22, 101:20-21, 103:9-12.

### **III. Claims Against Cole**

Whitaker contends Cole was deliberately indifferent to his suicide risk by not reporting his threat of self-harm to a mental health professional. “In a prisoner suicide case, to prevail under section 1983 for violation of substantive rights, under either the eighth or fourteenth amendment, the plaintiff must show that the jail official displayed deliberate indifference to the prisoner’s taking of his own life.” *Edwards v. Gilbert*, 867 F.2d 1271, 1274-75 (11th Cir. 1989) (internal quotation marks omitted). To show that a

defendant was deliberately indifferent, a plaintiff “must prove that the official had subjective knowledge of a risk of serious harm and disregarded that risk by conduct that constituted more than mere negligence.” *Gish v. Thomas*, 516 F.3d 952, 954 (11th Cir. 2008). “Deliberate indifference requires that the defendant deliberately disregard a strong likelihood rather than a mere possibility that the self-infliction of harm will occur.” *Id.* (internal quotation marks omitted). Further, “the official must be subjectively aware that the *combination* of the prisoner’s suicidal tendencies and the feasibility of suicide in the context of the prisoner’s surroundings creates a strong likelihood that the prisoner will commit suicide.” *Id.* at 955. “Egregious circumstances are required before a prison official who fails to identify a potentially suicidal inmate will be held liable under § 1983.” *Greffey v. State of Ala. Dep’t of Corrs.*, 996 F. Supp. 1368, 1381-82 (N.D. Ala. 1998).

The Court concludes the evidence is insufficient to establish deliberate indifference. Whitaker testified that Cole knew he was a “cutter” based on all of the cuts on his arm. Pl.’s Dep. 26:6-7. He has presented no evidence, however, that the previous “cuts” had occurred in the jail or that Cole was specifically aware of such prior incidents. Cole avers she is not aware of how he would have obtained the means to commit suicide because of the restrictions on what inmates were allowed to possess in the jail. Cole Decl. ¶ 5. Whitaker does not dispute this.

Moreover, the record establishes that Cole and other members of MCJ staff concluded Whitaker’s suicide threats were efforts to manipulate his placement in an HSP cell so he could be by himself. *Id.* ¶ 9; SMF ¶ 5. Whitaker himself admitted that he would seek placement in an HSP cell so he could masturbate to release his “anger” and “stress.”



Pl.’s Dep. 68:19-70:18. A “prior threat or attempt also must appear to have been genuine—to have been free of indicia of manipulative sham or pretense—in order to impart sufficient warning to the prison officials.” *Greffey*, 996 F. Supp. at 1383. Here, while Cole’s response to Whitaker’s suicide threat is arguably negligent, that is insufficient to support a claim for deliberate indifference to a risk of suicide. *See Fowler v. Chattooga Cnty., Ga.*, 307 F. App’x 363, 366 (11th Cir. 2009) (per curiam) (affirming grant of summary judgment where the defendant knew the inmate had used “idle threats of suicide to get his way” and noting that “negligence will not support an Eighth Amendment claim”).

#### **IV. Claims Against Jefferson**

##### **A. Excessive Force**

Whitaker claims Jefferson used excessive force when taking the blanket from him. The Supreme Court has clarified that “a pretrial detainee raising a Fourteenth Amendment claim needn’t prove an officer’s subjective intent to harm but instead need only show that ‘the force purposely or knowingly used against him was objectively unreasonable.’” *Piazza v. Jefferson Cnty., Ala.*, 923 F.3d 947, 952 (11th Cir. 2019) (quoting *Kingsley v. Hendrickson*, 576 U.S. 389, 396-97 (2015)). “The objective-reasonableness determination must be made ‘from the perspective of a reasonable officer on the scene.’” *Shuford v. Conway*, 666 F. App’x 811, 816 (11th Cir. 2016) (per curiam) (quoting *Kingsley*, 576 U.S. at 397). To determine whether the amount of force used was objectively reasonable, the Court must consider “the facts and circumstances of each particular case,” including

the relationship between the need for use of force and the amount of force used; the extent of the plaintiff’s injury; any effort made by the officer to temper or limit the amount of force; the severity of the security problem at

issue; the threat reasonably perceived by the officer; and whether the plaintiff was actively resisting.

*Kingsley*, 576 U.S. at 397.

Applying these factors, Whitaker cannot show the force used by Jefferson was excessive. Whitaker describes Jefferson punching him and elbowing him. Pl.’s Dep. 73:4-20, 82:21-22. That sounds awful. But the reality is Jefferson left no marks on Whitaker, and Whitaker’s only alleged injury is a vague complaint about soreness two days later. *Id.* at 73:24-75:8, 75:10-14. Thus, regardless of how Whitaker describes it, Jefferson clearly did not use much force, and the incident was over very quickly. Further, the need for the use of force and security issues involved is obvious. Whitaker does not deny constantly masturbating in front of nurses—including the specific incident to which Jefferson was responding—or creating the ire of fellow inmates and staff as a result. *Id.* at 68:3-13, 69:5-12, 70:3-11. He just seems to think MCJ staff was unreasonable for not accommodating him. Hence, Jefferson needed to take the blanket, which Whitaker was using to facilitate his activities. Finally, Whitaker resisted Jefferson’s attempt to take the blanket.<sup>5</sup> *Id.* at 73:8-9; SMF ¶ 13. Therefore, Jefferson’s use of force was objectively reasonable.

#### B. Retaliation

Whitaker alleges Jefferson’s taking of the blanket constitutes retaliation for filing grievances in violation of his First Amendment rights. To prove retaliation, a plaintiff must establish “(1) his speech or act was constitutionally protected; (2) the defendant’s

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<sup>5</sup> Jefferson denies punching or elbowing Whitaker to obtain the blanket, so there is no direct evidence as to his efforts to temper the amount of force or the threat he perceived. Jefferson Decl. ¶ 7.

retaliatory conduct adversely affected the protected speech; and (3) there is a causal connection between the retaliatory actions and the adverse effect on speech.” *Moton v. Cowart*, 631 F.3d 1337, 1341 (11th Cir. 2011) (internal quotation marks omitted). Whether the defendant’s conduct adversely affected the protected conduct is an objective test as opposed to a subjective one requiring the plaintiff to prove the exercise of their First Amendment rights was “actually chilled.” *Bennett v. Hendrix*, 423 F.3d 1247, 1250-51 (11th Cir. 2005). The Court applies an “ordinary firmness test,” meaning the Court looks at whether the “retaliatory conduct would likely deter a person of ordinary firmness from the exercise of First Amendment rights.” *Id.* at 1250 (internal quotation marks omitted). “To establish causation, the plaintiff must show that the defendant was subjectively motivated to discipline the plaintiff for exercising his First Amendment rights.” *Moton*, 631 F.3d at 1341 (internal quotation marks omitted).

Here, Whitaker cannot show Jefferson’s conduct violated his First Amendment rights. Regarding the second prong, the evidence shows Whitaker continued to file grievances after the incident, including a grievance about the incident itself. SMF ¶ 9; Pl.’s Dep. Ex. 3, ECF No. 38-3. While not dispositive on its own, it is evidence that Jefferson’s conduct would not likely deter a person of ordinary firmness from exercising their First Amendment rights. *See Mitchell v. Thompson*, 564 F. App’x 452, 457 (11th Cir. 2014) (per curiam) (noting that plaintiff continued to file grievances after the incident, “illustrat[ing] that a person of ordinary firmness would likely not be deterred from engaging in such speech”).

As for the second prong, Jefferson allegedly cited Whitaker's grievances as a reason for taking his blanket. Pl.'s Dep. 82:18-20. Nevertheless, even if the grievances were a motivating factor for Jefferson's conduct, he can still prevail if he can show he would have taken the same action even in the absence of the protected activity. *Smith v. Mosley*, 532 F.3d 1270, 1278 (11th Cir. 2008) (citing *Thaddeus-X v. Blatter*, 175 F.3d 378, 399 (6th Cir. 1999)). The evidence in this case establishes conclusively that he would have. Whitaker himself quotes Jefferson as saying Whitaker's masturbation was one reason for taking his blanket. Pl.'s Dep. 82:19. He also admits being told his masturbation was the reason his blanket was taken. *Id.* at 66:10-16. Nor does he dispute Jefferson's contention a staff nurse had complained to him about Whitaker masturbating in her presence. *Id.* at 68:3-13, 70:3-5; Jefferson Decl. ¶ 6; SMF ¶ 7. His only theory is that his masturbation was just a pretense to assault him and that Cole had put Jefferson up to it. Pl.'s Dep. 51:4-10, 52:5-11, 79:22-80:15. He offers no evidence to support this beyond pure speculation. “[I]nferences based upon speculation are not reasonable,’ and may not defeat a motion for summary judgment.” *Martinez v. Burns*, 459 F. App'x 849, 850 (11th Cir. 2012) (per curiam) (quoting *Marshall v. City of Cape Coral, Fla.*, 797 F.2d 1555, 1559 (11th Cir.1986)). Therefore, the Court recommends summary judgment be granted on the retaliation claim.

### C. Bodily Privacy

Whitaker alleges Jefferson violated his right to bodily privacy when he confiscated his blanket, resulting in him being left naked in a cell with four other men for nine hours. The Eleventh Circuit has “recogniz[ed] prisoner's constitutional right to bodily privacy

because most people have a special sense of privacy in their genitals, and involuntary exposure of them in the presence of people of the other sex may be especially demeaning and humiliating.” *Fortner v. Thomas*, 983 F.2d 1024, 1030 (11th Cir. 1993) (internal quotation marks omitted). The right to privacy recognized in *Fortner*, however, was “very narrow,” and subsequent cases have generally limited it to situations where a prisoner was involuntarily exposed to a member of the opposite sex. *See Boxer X v. Harris*, 437 F.3d 1107, 1110-11 (11th Cir. 2006), *abrogated on other grounds as recognized in Sconiers v. Lockhart*, 946 F.3d 1256, 1259 (11th Cir. 2020); *see also Harrison v. Carter*, No. 4:13–cv–00011–CLS–TMP, 2013 WL 2443845, at \*2 (N.D. Ala. May 30, 2013) (“It is important to note that the decision in *Fortner* involved the viewing of naked prisoners by members of the opposite sex. In fact, language in the *Fortner* decision makes it clear that the sexual component was a major factor in the decision[.]”); *Gaston v. Grimer*, No. 5:15-cv-13, 2015 WL 7067838, at \*3 (S.D. Ga. Sept. 29, 2015) (noting exposure to a member of the opposite gender “is the essence of a right to privacy claim under *Fortner*”), *recommendation adopted by* 2015 WL 7069344 (M.D. Ga. Nov. 12, 2015).

Whitaker’s only complaint in this case is about his exposure to four other male inmates in a jail cell.<sup>6</sup> Pl.’s Dep. 27:12-14, 58:1-2, 117:18-20, 125:21-22. In fact, it is clear that exposure to females did not bother Whitaker at all. Pl.’s Dep. 116:24-117:5. While the Court cannot state there are no circumstances where a violation of bodily privacy

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<sup>6</sup> In its preliminary screening order, the Court noted the taking of the blanket left Whitaker exposed to at least one jail official of the opposite sex. Order 11, June 24, 2022. Upon closer review of Whitaker’s complaint, though, that exposure only occurred because “he backed away from the door to show her he was truly naked.” Compl. 9.

claim can be established for exposure to members of the same sex, it would have to be under facts much more egregious than here. *See Weeks v. Grady*, No. 1:18-CV-1373-SDG-JKL, 2022 WL 3137998, at \*10 (N.D. Ga. Feb. 23, 2022) (recommending denial of summary judgment motion in case involving same-sex group strip search without penological justification), *recommendation adopted by* 2022 WL 3137998 (N.D. Ga. July 8, 2022).

As separate and independent grounds for recommending Jefferson be granted summary judgment on this claim, the Court also concludes the evidence is insufficient to even show he was aware of Whitaker's prolonged exposure. This is not a case involving a strip search or a jail policy requiring communal nudity. While Whitaker alleged in his unverified complaint that he told Jefferson he had no smock and would be left naked in the cell without the blanket, he has presented no admissible evidence to this effect. Compl. 8-9. Instead, his basis for alleging Jefferson knew he did not have a smock was his complaining "every day" about it, an assertion he felt would be supported by cameras and microphones. Pl.'s Dep. 126:23-127:2. Whitaker, however, has produced no evidence Jefferson was aware of the daily complaints. On the other hand, Jefferson averred that on the day of the incident, a nurse reported to him that Whitaker had removed his smock and was naked under the blanket. Jefferson Decl. ¶ 6. Thus, the information given to Jefferson was that Whitaker had a smock available to him but chose not to wear it. Even if Jefferson's belief was incorrect, the most it establishes is negligence, and "[§] 1983 requires more than negligence." *Anderson v. Ga. State Pardons and Parole Bd.*, 165 F. App'x 726, 729 (11th Cir. 2006) (per curiam) (citing *Daniels v. Williams*, 474 U.S.

327, 330–33 (1986)).

### CONCLUSION

For the reasons explained above, it is recommended that Defendants’ motion for summary judgment (ECF No. 33) be granted.<sup>7</sup> Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to this Recommendation, or seek an extension of time to file objections, within **FOURTEEN (14) DAYS** after being served with a copy hereof. Any objection should be no longer than **TWENTY (20) PAGES** in length. The district judge shall make a de novo determination of those portions of the Recommendation to which objection is made. All other portions of the Recommendation may be reviewed for clear error.

The parties are hereby notified that, pursuant to Eleventh Circuit Rule 3-1, “[a] party failing to object to a magistrate judge’s findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court’s order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of justice.”

**SO RECOMMENDED**, this 19th day of April, 2023.

/s/ Stephen Hyles

UNITED STATES MAGISTRATE JUDGE

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<sup>7</sup> Whitaker has also filed a motion requesting the Court order his transfer from MCJ to the Harris County Jail (ECF No. 28). While there are numerous reasons to deny this motion, the Court recommends it be denied as moot because he is no longer in MCJ.