IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

DAVID BOY FULLER, #147862,	)	
Plaintiff,	)	
v.	)	CIVIL ACTION NO. 2:13-CV-417-WHA
LT. NEARER, et al.,	)	
Defendants.	)	

ORDER

This case is before the court on the Recommendation of the Magistrate Judge (Doc. #60) and the Plaintiff's Objections thereto (Doc. #69).[1]

Following an independent evaluation and *de novo* review of the file in this case, the court finds the Objection to be without merit.

Plaintiff argues that the Magistrate Judge treated this case as if it was a "malpractice negligence suit rather than judging the propriety of the plaintiff's claims in light of the duty imposed by the laws of the United States" Doc. 69 at 10. Contrary to Plaintiff's assertion, the Magistrate Judge cited *Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976) for the proposition that mere negligence in providing medical care is insufficient to violate the Constitution, and also cited *Waldrop v. Evans*, 871 F.2d 1030, 1033 (11th Cir. 1989) (mere medical malpractice does not constitute deliberate indifference). See Doc. 60 at 5, 9.

To the extent Plaintiff's objections do no more than re-argue the merits of his case, these allegations were addressed in the Recommendation, and with which this court agrees. To the extent the objections assert additional arguments, new theories of liability, and/or new allegations, such

[1] This document is styled as a Complaint, but it is treated as an objection to the outstanding Recommendation.

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attempts are rejected. *See Gilmour v. Gates, McDonald & Co.*, 382 F.3d 1312, 1315 (11th Cir. 2004) ("A plaintiff may not amend h[is] complaint through argument in a brief opposing summary judgment.").

Therefore, it is hereby ORDERED as follows:

1. Plaintiff's Objection is OVERRULED.
2. The court adopts the Recommendation of the Magistrate Judge.
3. Defendant's Motions for Summary Judgment (Doc. #25, 27, 39) are GRANTED.
4. Plaintiff's federal law claims are DISMISSED with prejudice.
5. The court declines to exercise supplemental jurisdiction over the Plaintiff's state law claims and they are DISMISSED without prejudice.
6. Judgment will be entered in favor of the Defendants and against the Plaintiff.

Done this 16th day of November, 2016.

/s/ W. Harold Albritton
SENIOR UNITED STATES DISTRICT JUDGE