



## II. *Standard of Review*

### *Motion to Dismiss*

“While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff’s obligation to prove the ‘grounds’ of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Bell Atlantic Corporation v. Twombly*, 127 S.Ct. 1955, 1964-65 (2007). “[S]omething beyond the mere possibility of loss causation must be alleged, lest a plaintiff with a ‘largely groundless claim’ be allowed to ‘take up the time of a number of other people...’” *Id.* at 1966 (quoting *Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336 (2005)). “[T]hreadbare recitals of the elements of a cause of action, supported by mere statements, do not suffice.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009). In deciding a motion to dismiss pursuant to Rule 12(b)(6), the court must “accept the well-pled allegations of the complaint as true” and “construe the facts and reasonable inferences derived therefrom in the light most favorable to the plaintiff.” *Ibarra v. United States*, 120 F.3d 472, 474 (4<sup>th</sup> Cir. 1997). However, “because the court is testing the legal sufficiency of the claims, the court is not bound by plaintiff’s legal conclusions.” *IFAST, Ltd. v. Alliance Solution Telecommunications Industry*, 2007 WL 3224582 \*3 (D. Md. 2007).

## III. *Analysis*

Newby seeks dismissal of the action, arguing inter alia that he is a medical doctor in the field of pathology. Newby avers that he is the Laboratory Director of Hagerstown Medical Laboratory and has never employed or supervised any health care providers who provide clinical interaction

with prisoners of the Maryland Correctional Training Center. He further avers that he had no involvement or knowledge of the allegations set forth in Plaintiff's Supplemental Complaint. Paper No. 15, Affidavit.

Plaintiff states that he was injured due to the lack of medical care provided to him but admits that he is not sure who is responsible for his lack of medical care. Paper No. 17. To the extent Plaintiff seeks to hold Newby liable as the Laboratory Director, his claim fails. The law in the Fourth Circuit is well established that the doctrine of *respondeat superior* does not apply in §1983 claims. *See Love-Lane v. Martin*, 355 F. 3d 766, 782 (4<sup>th</sup> Cir. 2004) (no respondeat superior liability under §1983); *see also Trulock v. Freeh*, 275 F. 3d 391, 402 (4<sup>th</sup> Cir. 2001) (no respondeat superior liability in a *Bivens* suit). Liability of supervisory officials "is not be based on ordinary principles of *respondeat superior*, but rather is premised on 'a recognition that supervisory indifference or tacit authorization of subordinates' misconduct may be a causative factor in the constitutional injuries they inflict on those committed to their care.'" *Baynard v. Malone*, 268 F. 3d 228, 235 (4<sup>th</sup> Cir. 2001) *citing Slakan v. Porter*, 737 F. 2d 368, 372 (4<sup>th</sup> Cir. 1984). Supervisory liability under § 1983 must be supported with evidence that: (1) the supervisor had actual or constructive knowledge that his subordinate was engaged in conduct that posed a pervasive and unreasonable risk of constitutional injury to citizens like the plaintiff; (2) the supervisor's response to the knowledge was so inadequate as to show deliberate indifference to or tacit authorization of the alleged offensive practices; and (3) there was an affirmative causal link between the supervisor's inaction and the particular constitutional injury suffered by the plaintiff. *See Shaw v. Stroud*, 13 F. 3d 791, 799 (4<sup>th</sup> Cir. 1994).

Plaintiff has failed to allege, much less demonstrate, that Defendant was in any manner responsible

for the alleged lack of medical care he experienced. To the contrary, Defendant avers that as a clinical pathologist he no interaction with clinical care provided to inmates. Paper No. 15, Affidavit.

Accordingly, Plaintiff's claim against Defendant Newby fails.

IV. *Conclusion*

For the aforementioned reasons, Defendant Newby's dispositive motion shall be granted. A separate Order follows.

September 29, 2009

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/s/  
PETER J. MESSITTE  
UNITED STATES DISTRICT JUDGE