

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

JOHN C. SPAULDING,

Plaintiff,

v.

CASE NO. 4:11-cv-00605-MP-CAS

RONNIE WOODALL, et al.,

Defendants.

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ORDER

This matter is before the Court on doc. 157, a motion for extension and notice of change of address, and doc. 158, a response or objection to the Court's Report and Recommendation, both by John C. Spaulding. By way of background, on February 12, 2015, the Magistrate Judge entered a Report and Recommendation regarding numerous motions to dismiss that had been filed by Defendants. (Doc. 146). The Magistrate Judge then entered an Amended Report and Recommendation on February 17, 2015, to correct a typographical error. (Doc. 148). Plaintiff then filed a motion for extension to respond to the Court's Report and Recommendation (doc. 150), explaining that he was unable to review the document as he had recently been incarcerated at the Union County Jail. On March 2, 2015, the Magistrate Judge granted the motion, extending the deadline for the filing of objections to March 31, 2015. (Doc. 151). The Magistrate Judge then entered an Order on March 13th detailing the recent history of issues with mail returns from Plaintiff and directing the Clerk to mail another copy of the original Report and Recommendation to Plaintiff's current address. (Doc. 155). The Order also reminded Plaintiff that the deadline for filing objections to the Amended Report and Recommendation, which had

not been returned to the Court as undeliverable, remained March 31, 2015. *Id.*

Despite the extension and the Magistrate Judge's reminder, Plaintiff filed no objections on or before the March 31st deadline. On April 13, 2015, the undersigned entered an Order adopting and incorporating the Amended Report and Recommendation. (Doc. 156). In accordance with the Magistrate Judge's recommendations, the Court dismissed a variety of Plaintiff's claims. The Court remanded the matter to the Magistrate Judge for further proceedings, with all remaining claims proceeding against Defendants in their individual capacities only, limited to nominal damages only, with the exception of Plaintiff's claims against Defendants Gartman and Madan, upon which Plaintiff may request compensatory and punitive damages. *Id.*

Subsequently, Plaintiff filed the instant motion for extension of time (doc. 157) and objection to the Amended Report and Recommendation (doc. 158). In his motion for extension, Plaintiff indicates that he is currently incarcerated in the Miami Dade Corrections and Rehabilitation Department. He states that he has not been able to receive any of the Court's recent Orders. He also requests a second extension of time, presumably to file objections to the Amended Report and Recommendation. *Id.* In his concurrently filed objections to the Amended Report and Recommendation (doc. 158), Plaintiff states that on April 8, 2015, he finally received from his girlfriend the Court's Report and Recommendation and other mail. He claims that he "was totally unaware that his deadline to file [objections] was March 31, 2015." *Id.* at 2.

In an abundance of caution, the Court finds that the motion for extension of time should be granted *nunc pro tunc* and that Plaintiff's objections to the Amended Report and Recommendation should be considered. To facilitate this, the Court's Order at doc. 156, which adopted the Amended Report and Recommendation, is hereby vacated.

The Court has now made a *de novo* review of the Amended Report and Recommendation based on Plaintiff's objections. Having so considered the Amended Report and Recommendation, and Plaintiff's objections thereto, the Court again finds that the Amended Report and Recommendation should be adopted. Plaintiff's objections are conclusory in nature and/or simply restate the same arguments that were thoroughly considered and adequately addressed by the Magistrate Judge. To the extent that Plaintiff seeks leave to file a fifth amended complaint, such issue shall be addressed through Plaintiff's recently filed motion at doc. 162, and the Magistrate Judge's recently issued Report and Recommendation thereon (doc. 163).

Accordingly, it is hereby

ORDERED AND ADJUDGED:

1. Plaintiff's motion for extension of time (doc. 157) is GRANTED to the extent that the Court has reviewed and considered Plaintiff's concurrently filed objections to the Amended Report and Recommendation (doc. 158).
2. The Court's Order at doc. 156 is VACATED so that the Court may now consider Plaintiff's objections at doc. 158.
3. The Magistrate Judge's Amended Report and Recommendation (doc. 148) is adopted and incorporated by reference in this order.
4. Plaintiff's claims raised against Defendants Jennings and Johnson are DISMISSED for failure to serve Defendants with process within 120 days as required by Rule 4(m).
5. Plaintiff's claims against Defendant Tucker are DISMISSED for failure to state a claim and for failure to serve process.
6. The first motion to dismiss by Defendants Adams, Neel, and Secretary Jones (doc. 74) is GRANTED. Plaintiff's claim against the Secretary of the Department of Corrections Michael Crews, hereby substituted as Julie Jones, is DISMISSED as Plaintiff's requests for injunctive and declaratory relief are moot and Defendant holds immunity under the Eleventh Amendment. Plaintiff's claims against Defendants Adams and Neel are DISMISSED for failure to state a claim

upon which relief may be granted.

7. The second motion to dismiss by Defendants Bass, Ford, Gartman, Goodwin, Howard, and Landrum (doc. 78) is GRANTED IN PART. Plaintiff's claims against these Defendants in their official capacities, Plaintiff's requests for declaratory and injunctive relief against these Defendants, and Plaintiff's requests for monetary damages as to Defendants Bass, Ford, Goodwin, Howard, and Landrum, are DISMISSED. Otherwise, the motion is DENIED.
8. The third motion to dismiss by Defendants Lagos and Woodall (doc. 97) is GRANTED IN PART. Plaintiff's claims against these Defendants in their official capacities, and Plaintiff's requests for declaratory and injunctive relief and monetary damages against these Defendants, are DISMISSED. Otherwise, the motion is DENIED.
9. The fourth motion to dismiss by Defendant Reynolds (doc. 118) is GRANTED IN PART. Plaintiff's claims against this Defendant in her official capacity and Plaintiff's requests for declaratory and injunctive relief and monetary damages against this Defendant are DISMISSED. Otherwise, the motion is DENIED.
10. This case is REMANDED to the Magistrate Judge for further proceedings, with all remaining claims proceeding against Defendants in their individual capacities only, limited to nominal damages only with the exception of Plaintiff's claims against Defendants Gartman and Madan, upon which Plaintiff may request compensatory and punitive damages.

DONE AND ORDERED this 7th day of May, 2015

s/Maurice M. Paul
Maurice M. Paul, Senior District Judge