

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

AARON C. BERTA,

Plaintiff,

v.

RANDY YOUNG and DAVID JOSEPH,

Defendants.

Case No. 3:17-cv-77-JPG-DGW

MEMORANDUM & ORDER

J. PHIL GILBERT, DISTRICT JUDGE

This matter comes before the Court on the Report and Recommendation (“Report”) (Doc. 22) of Magistrate Judge Donald G. Wilkerson with regard to the Defendants’ Motion to Dismiss for Failure to State a Claim or, in the Alternative, Motion for Summary Judgment (Doc. 19) and Plaintiff Aaron C. Berta’s Motion for Injunctive Relief (Doc. 20). The Court may accept, reject, or modify—in whole or in part—the findings or recommendations of the magistrate judge in a report and recommendation. FED. R. CIV. P. 72(b)(3). The Court must review *de novo* the portions of the report to which objections are made. *Id.* “If no objection or only partial objection is made, the district court judge reviews those unobjected portions for clear error.” *Johnson v. Zema Sys. Corp.*, 170 F.3d 734, 739 (7th Cir. 1999).

The Court previously extended the objection period here to November 9, 2017 (Doc. 24), but neither party has filed an objection to the Report. The Court has reviewed the entire file and finds that the Report is not clearly erroneous. Accordingly, the Court hereby:

- **ADOPTS** the Report in its entirety (Doc. 22);
- **DENIES in part** and **FINDS MOOT in part** the Defendants’ Motion to Dismiss for Failure to State a Claim or, in the Alternative, Motion for Summary Judgment (Doc. 19);

- **DIRECTS** the Clerk of Court to refile Plaintiff’s Motion for Injunctive Relief (Doc. 20) as the First Amended Complaint, in which Plaintiff will be allowed to proceed on the following claim:

Count One: Fourteenth Amendment claim against Superintendent Young, Captain Joseph, and Dr. Blankenship for denying Plaintiff adequate dental care for his impacted wisdom teeth, cavities, infection, and associated pain during his pretrial detention at the Madison County Jail in 2016-2017.

- **DIRECTS** the Clerk of Court—if and only if Plaintiff files a motion for substitution as to defendant Robert Blankenship by February 6, 2018—to prepare for the newly substituted defendant (1) Form 5 (Notice of a Lawsuit and Request to Waive Service of a Summons), and (2) Form 6 (Waiver of Service of Summons). The Clerk shall mail these forms, a copy of the First Amended Complaint, and the Court’s relevant Order to the substituted Defendant’s place of employment as identified by Plaintiff. If the substituted Defendant fails to sign and return the Waiver of Service of Summons (Form 6) to the Clerk within 30 days from the date the forms were sent, the Clerk shall take appropriate steps to effect formal service on the substituted Defendant, and the Court will require that the substituted Defendant pay the full costs of formal service, to the extent authorized by the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

DATED: NOVEMBER 30, 2017

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE