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UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

ALEXANDRIA DIVISION

KENRICK ARMSTRONG

CIVIL ACTION NO. 13-596

VERSUS

JUDGE TRIMBLE

FCI POLLOCK, ET AL.

MAGISTRATE JUDGE KIRK

JUDGMENT AND ORDER

Before the court is the report and recommendation of the magistrate judge in the above-captioned prisoner civil rights case.¹ The magistrate judge proposes that plaintiff's Bivens claims regarding alleged injuries received in the course of the imposition of Special Housing Unit sanctions be dismissed as frivolous given plaintiff's admission that he failed to cooperate with FCI Pollock personnel's instructions.² The report and recommendations also proposes dismissal of plaintiff's Federal Tort Claims Act ("FTCA") claims on the basis that plaintiff's intentional tort allegations fall outside of the United States' waiver of sovereign immunity and, thus, this court lacks subject matter jurisdiction to hear such claims.³

Plaintiff filed timely objections to the report and recommendation.⁴ Plaintiff objects to the dismissal of his Bivens claims, arguing that he should be granted leave to amend his complaint.⁵ Although plaintiff fails to indicate what amendments he intends to make and, more importantly, what impact such amendments may have on the applicability of the magistrate judge's recommendation of dismissal for frivolity, out of an abundance of caution, the court will

¹ R. 16.

² Id. at pp. 3-5.

³ Id. at pp. 5-7.

⁴ R. 18.

⁵ Id. at pp. 1-6.

permit amendment of plaintiff's complaint, but only as to his Bivens claims. After review of the entire record in this case, we find that the magistrate judge's proposed findings as to plaintiff's FTCA claims are correct under all applicable law and, for that reason, it is hereby

ORDERED that plaintiff's objections, construed to include a motion for leave to amend his complaint, are **GRANTED** only in that plaintiff is hereby granted **THIRTY (30) DAYS** from the date of issuance of this order in which to amend his Bivens claims or face dismissal of same. Should plaintiff so amend, the matter is then referred to the magistrate judge again for review and issuance of report and recommendation. It is further

ORDERED that plaintiff's **FTCA** claims are **DENIED** and **DISMISSED** for lack of jurisdiction.

THUS DONE AND SIGNED in chambers at Alexandria, Louisiana this 13th day of January, 2014.



JAMES T. TRIMBLE, JR.
UNITED STATES DISTRICT JUDGE