

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

THOMAS H. MITCHELL)
)
 Plaintiff,)
)
 v.) CV-08-341-B-W
)
 RANDALL LIBERTY, *et. al.*,)
)
 Defendants.)

**ORDER AFFIRMING THE RECOMMENDED DECISION
OF THE MAGISTRATE JUDGE**

On October 8, 2008, Randall Liberty, Marsha Alexander, Sergeant Roberts, and Laura Briggs removed to this Court a civil action filed by Thomas H. Mitchell under 42 U.S.C. § 1983, alleging violations of Mr. Mitchell's civil rights. Mr. Mitchell, who is incarcerated at the Kennebec County Jail, asserted his civil rights were violated by the failure of the state of Maine to create an adequate law library, to provide training for inmate legal assistance, to secure necessary medical and dental care, to make available copies of the Jail's Grievance and Disciplinary Policies and Procedures, and by engaging in price gouging at the Jail Canteen. *Compl.* (Docket # 2-3). With their Answer, Defendants Liberty, Alexander, and Roberts moved to dismiss the Complaint on October 8, 2008 and, on October 16, 2008, with the filing of her Answer, Defendant Briggs followed suit. *Defs. Randall Liberty, Lt. Marsha Alexander, and Sgt. Roberts' Mot. to Dismiss* (Docket # 7); *Def. Laura Briggs's Mot. to Dismiss* (Docket # 12). On December 5, 2008, Mr. Mitchell objected to the motions to dismiss, *Pl.'s Rebuttal to Defs.' Mot. to Dismiss* (Docket # 17); Defendant Briggs replied on December 10, 2008, *Def. Laura Briggs's Reply to Pl.'s Opp'n to Mot. to Dismiss* (Docket # 18); Defendants Liberty, Alexander, and

Roberts replied on December 16, 2008. *Def. Liberty, Alexander and Roberts' Reply Mem. In Support of Mot. to Dismiss* (Docket # 21).

The Magistrate Judge issued her Recommended Decision on the Briggs motion to dismiss on December 11, 2008 and recommended that the Court grant the motion. *Recommended Dec. on Def. Briggs's Mot. to Dismiss* (Docket # 20). She issued her Recommended Decision on the motion to dismiss of the remaining defendants on January 5, 2009. *Recommended Dec. on Mot. to Dismiss* (Docket # 23). In this Recommended Decision, the Magistrate Judge recommended that the Court dismiss Counts I, II, IV, and V and that the motion to dismiss Count III be conditionally denied, subject to the filing of an amended complaint. *Id.* at 9.

Following these filings, the docket became somewhat tangled. First, after the December 11, 2008 Recommended Decision had issued on the Briggs motion to dismiss, on December 24, 2008 Mr. Mitchell filed a reply to Ms. Briggs's response to his objection to her motion to dismiss. *Pl. Thomas H. Mitchell's Reply to Def. Briggs's Resp. to Pl.'s Opp'n to Mot. to Dismiss* (Docket # 22). The Local Rules do not allow a party to file a surreply to the moving party's reply. D. Me. Loc. R. 7. The Court, therefore, strikes Mr. Mitchell's surreply as unauthorized. Mr. Mitchell failed to object to the Recommended Decision regarding Defendant Briggs and the Court, therefore, affirms the Recommended Decision and dismisses his Complaint as against Defendant Laura Briggs.¹

Next, Mr. Mitchell filed a response to the Recommended Decision on Defendants Liberty, Alexander, and Roberts and indicated no objection to the recommended disposition of Counts I, II, IV, and V. *Resp. to Recommended Dec. on Mot. to Dismiss* (Docket # 24).

¹ The Court considered the possibility that the surreply was a mislabeled objection, but the surreply, though filed on December 24, 2009, was dated December 11, 2008, the same day the Recommended Decision issued, and urges the Court not to grant the Briggs motion to dismiss. Accordingly, the document filed in docket number twenty-two was not an objection to the Recommended Decision.

Accordingly the Court affirms without objection the Magistrate Judge's Recommended Decision regarding Counts I, II, IV, and V and dismisses each count. Regarding Count III, Mr. Mitchell stated that he would move to amend his complaint.

On January 13, 2009, Mr. Mitchell moved to amend his Complaint against Defendants, but failed to file a proposed amended pleading. *Req. to Amend Original Compl. and Relief Sought* (Docket # 25). On February 3, 2009, the Magistrate Judge reserved ruling on the motion to amend, since Mr. Mitchell had failed to file a proposed amended complaint with the motion, and noted that this issue would not be resolved in any event until resolution of the pending recommended decisions. *Order* (Docket # 26).

In sum, the Court takes the following actions:

1. The Court STRIKES as unauthorized Plaintiff Thomas H. Mitchell's Reply to Defendant Briggs's Response to Plaintiff's Opposition to Motion to Dismiss (Docket # 22);
2. The Court AFFIRMS without objection the Magistrate Judge's Recommended Decision filed December 11, 2008 regarding Defendant Laura Briggs's Motion to Dismiss (Docket # 20). The Court hereby GRANTS the Motion to Dismiss of Defendant Laura Briggs (Docket # 12).
3. The Court AFFIRMS without objection the Magistrate Judge's Recommended Decision filed January 5, 2009 regarding the motion to dismiss of Defendants Randall Liberty, Marsha Alexander, and Sergeant Roberts (Docket # 23). The Court GRANTS the Motion to Dismiss as to Counts I, II, IV, and V and DENIES the Motion to Dismiss conditionally as to Count III, allowing the Plaintiff leave to file an amended complaint that sets forth in one document the factual allegations pertaining

to his claims regarding dental care (Docket # 7). The Plaintiff must file an appropriate amended complaint regarding Count III within ten days of the date of this Order.

SO ORDERED.

/s/ John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
CHIEF UNITED STATES DISTRICT JUDGE

Dated this 5th day of February, 2009