

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

BENJAMIN ELLIOTT,

Plaintiff,

v.

DENESE WILSON, *Warden et al.*;
MATTHEW MARSKE, *Associate Warden*;
TONY LEE, *Captain*; WILLIAM EARL,
Retired SIS Lieutenant; MICHAEL WEBER,
SIS Technician; MARK BRUNS, *SIS
Technician*; DR. ANN LAVALLEY-WOOD,
Chief Psychologist; DR. KARI MAYNARD,
Former Drug Abuse Prevention Coordinator;
STEVE DENZINE, *Drug Treatment
Specialist*; DIXIE DAHL, *Drug Treatment
Specialist*; RYKKI GIGNON, *Drug Treatment
Specialist*; TERRY GREENFIELD, *Drug
Treatment Specialist*; KEITH KRZOSKA,
Drug Treatment Specialist; JOE JARVIS,
Unit Manager; JOHN ISAACSON, *Unit
Counselor*; STEVEN DRACY, *Correctional
Officer*; CATHY THOMPSON, *Psychology
Treatment Program Coordinator*; NICOLE
FEDO, *Case Manager*; DEBORAH JENSEN,
Correctional Systems Officer; 10
UNKNOWN FEDERAL BUREAU OF
PRISON EMPLOYEES, *all in both their
individual and official capacities*;

Defendants.

Case No. 15-cv-1908 (JNE/KMM)
ORDER

This matter comes before the Court upon the Report and Recommendation dated January 17, 2017, by the Honorable Katherine M. Menendez, United States Magistrate Judge, addressing Defendants' motion to dismiss Plaintiff Benjamin Elliott's Amended Complaint. Dkt. No. 157. Elliott opposed Defendants' motion to dismiss. *See* Dkt. No. 156. The Magistrate Judge recommends that all of Elliott's claims be dismissed except for an equal-protection claim against Defendants Maynard, Isaacson, Dahl, Denzine, Gignon, Greenfield, and Krzoska relating to a

search allegedly conducted on October 30, 2014. No objections to the Report and Recommendation were filed, and the filing deadline passed weeks ago. *See* D. Minn. L.R. 72.2(b)(1). The Court accepts the recommendations. *See id.* 72.2(b)(3).

Based on the files, records, and proceedings herein, and for the reasons stated above, IT IS ORDERED THAT:

1. Defendants' Motion to Dismiss or In the Alternative Motion for Summary Judgment [Dkt. No. 150] is GRANTED IN PART and DENIED IN PART as follows:
 - a. The Motion is DENIED with respect to the claim that Defendants Dr. Kari Maynard, John Isaacson, Dixie Dahl, Steve Denzine, Rykki Gignon, Terry Greenfield, and Keith Krzoska violated Plaintiff Benjamin Elliott's equal-protection rights by subjecting him to discipline for possession of photographs with homosexual content discovered on October 30, 2014.
 - b. The Motion is GRANTED in all other respects, as follows:
 - i. Elliott's official-capacity claims are DISMISSED WITHOUT PREJUDICE for lack of jurisdiction, except insofar as he seeks prospective, non-monetary relief for claims relating to his alleged dismissal from RDAP (which are DISMISSED WITH PREJUDICE as stated below).
 - ii. The remaining claims not presented in Administrative Remedy Series 806239 or 807563 are DISMISSED WITHOUT PREJUDICE for failure to exhaust administrative remedies.
 - iii. All remaining claims (including claims relating to his alleged dismissal from RDAP), with the exception of the equal-protection claim described above, are DISMISSED WITH PREJUDICE for failure to state a claim on which relief may be granted.
2. Defendants Denese Wilson, Matthew Marske, Tony Lee, William Earl, Michael Weber, Mark Bruns, Dr. Ann LaValley-Wood, Joe Jarvis, Steven Dracy, Cathy Thompson, Nicole Fedo, and Deborah Jensen are DISMISSED from this Action.

Dated: March 29, 2017

s/ Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge