

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

Steve Podkulski

v.

Civil No. 11-cv-102-JL

Jane Doe et al.

O R D E R

Before the court is pro se plaintiff Steve Podkulski's second amended complaint (doc. no. 36), which asserts claims against Sgt. Kristin Balles, Officer Ryan Donovan, Officer FNU Hujsak, Sgt. Todd Gordon, Officer Jason Barbera, a John Doe Corrections Officer, and a John Doe Sergeant at the Hillsborough County Department of Corrections ("HCDC"). In a report and recommendation issued on this date, the court has recommended dismissal of Claims 2(a), 2(d), and 2(f), numbered therein, including all claims asserted against Officer Hujsak.

Defendants who have appeared in this action are directed to respond within fourteen days to the remaining claims set forth in the second amended complaint, numbered in the report and recommendation issued on this date as Claims 1(a), 1(b), 2(b), 2(c), 2(e), and 3.

Claim 2(b) is asserted against a John Doe sergeant in the second amended complaint. The district judge issued an order

(doc. no. 37), approving an earlier report and recommendation (doc. no. 31), in which the undersigned magistrate judge recommended dismissal, without prejudice, of the same claim asserted in the first amended complaint, due to plaintiff's failure to name the sergeant. In light of Podkulski's out-of-state incarceration, the court hereby reconsiders its prior recommendation and allows Claim 2(b) to proceed against a John Doe sergeant, so that plaintiff may obtain the name through discovery. Plaintiff's failure to file an amended complaint, including that sergeant's name, on or before either the date for amending the pleadings or the date for joining parties may result in an order dismissing Claim 2(b).¹

Also pending before the court is plaintiff's motion (doc. no. 39), seeking leave to file a late objection to a March 12, 2012, report and recommendation (doc. no. 24). Plaintiff asserts in the motion that he did not receive a copy of the report and recommendation, and that he plans to object to every order in this case that is adverse to his interests.

The report and recommendation at issue is favorable to plaintiff, insofar as it recommended that defendants' motion to dismiss be denied. The district judge on April 18, 2012, issued

¹ These dates have not yet been established. Once a discovery plan is approved, these dates will become part of a scheduling order in this case.

an order (doc. no. 27) approving that report and recommendation and denying the motion to dismiss.


Further, the court has since provided a second copy of the report and recommendation to plaintiff, and plaintiff has failed to submit any proposed objection thereto. The court finds that granting plaintiff's request is not in the interest of justice or judicial economy. The motion (doc. no. 39) is denied.

Conclusion

The court DENIES plaintiff's motion for leave to file a late objection to the March 12 Report and Recommendation (doc. no. 39).

The court DIRECTS defendants, within 14 days of issuance of this order, to file a response to the Second Amended Complaint (doc. no. 36), with respect to the surviving claims therein (Claims 1(a), 1(b), 2(b), 2(c), 2(e), and 3).

SO ORDERED.



Landya McCafferty
United States Magistrate Judge

October 11, 2012

cc: Steve Podkulski, pro se
John Curran, Esq.

LBM:nmd