

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SAMUEL CABASSA,

Plaintiff,

-v-

9:06-CV-0852

RICHARD WURZEL,

Defendant.

APPEARANCES:

COVINGTON & BURLING LLP
Attorneys for Plaintiff
620 Eighth Avenue
New York, NY 10018

HON. ERIC T. SCHNEIDERMAN
Attorney General for the State of New York
Attorney for Defendant
The Capitol
Albany, NY 12224

DAVID N. HURD
United States District Judge

OF COUNSEL:

PHILLIP A. IRWIN, ESQ.
DOUGLAS S. CURRAN, ESQ.

C. HARRIS DAGUE, ESQ.
Ass't Attorney General

DECISION and ORDER

Plaintiff brought this civil rights action pursuant to 42 U.S.C. § 1983. On August 28, 2013, the Honorable David E. Peebles, United States Magistrate Judge, advised, by Report-Recommendation, that defendant's motion for judgment on the pleadings be granted with leave to replead only with respect to plaintiff's Eighth Amendment medical indifference claim

against defendant Wurzel based upon the alleged delay in or about April 2005 to provide him with a contact lens for his right eye. Plaintiff timely filed objections to the Report-Recommendation. The defendant did not respond.

Based upon a de novo review of the portions of the Report-Recommendation to which plaintiff objected, the Report-Recommendation is accepted in part and rejected in part. See 28 U.S.C. § 636(b)(1).

Therefore, it is

ORDERED that

1. Defendant Wurzel's motion for judgment on the pleadings is DENIED as to plaintiff's failure to timely serve him under Federal Rule of Civil Procedure 4(m);

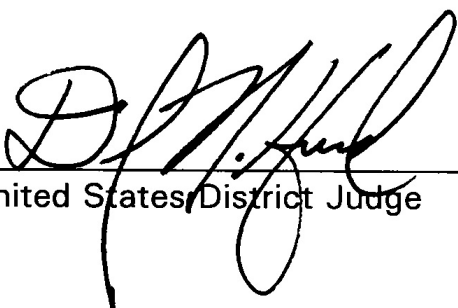
2. Defendant Wurzel's motion for judgment on the pleadings is GRANTED with leave to replead as follows;

3. Plaintiff is granted leave to file an amended complaint only as to his Eighth Amendment medical indifference claims against defendant Wurzel: (1) based upon the alleged delay in or about April 2005 to provide him with a contact lens for his right eye, and (2) based upon the allegation that defendant Wurzel along with two other individuals made plaintiff wait in October 2005 for a replacement pair of contact lenses;

4. The amended complaint shall be filed on or before October 18, 2013; and

5. Failure to file an amended complaint will result in a judgment dismissing the complaint without further order.

IT IS SO ORDERED.



United States District Judge

Dated: September 25, 2013
Utica, New York.