

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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MICHAEL CAGLE,  
Plaintiff,

v.

9:09-CV-0648  
(FJS/GHL)

GRAVLIN, DEMARSE, VAN ORGRUM,  
BONDS, LIRA, TROMBLY, OTIS,  
BELLINGER,

Defendants.

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**APPEARANCES:**

**OF COUNSEL:**

MICHAEL CAGLE  
Plaintiff, *pro se*  
09-CV-0648  
Sullivan Correctional Facility  
P.O. Box 116  
Fallsburg, NY 12733

HON. ANDREW M. CUOMO  
Attorney General of the  
State of New York  
Attorney for Defendants  
The Capitol  
Albany, New York 12224

Krista A. Rock, Esq.

**FREDERICK J. SCULLIN, S. D. J.**

**DECISION AND ORDER**

Presently before the Court is Magistrate Judge George H. Lowe's April 29, 2010 Report-Recommendation in which he recommends the defendants' motion to dismiss for failure to state a claim be **GRANTED IN PART AND DENIED IN PART**. The Court, having reviewed the

Report-Recommendation and the entire file in this matter and no objections to said Report-Recommendation having been filed, hereby

**ORDERS** that the Report-Recommendation filed by Magistrate Judge George H. Lowe on April 29, 2010 is, for the reasons stated therein, accepted in its entirety; and the Court further

**ORDERS** that Defendants' motion to dismiss for failure to state a claim is **GRANTED IN PART AND DENIED IN PART**; and the Court further

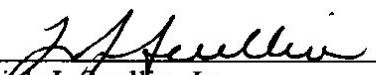
**ORDERS** that the following claims are **dismissed with prejudice**: (1) all claims against Defendants in their official capacities; (2) all claims against Defendants Van Orgrum and Bonds; (3) the claim that Defendants retaliated against Plaintiff; and (4) any claim that Defendants verbally harassed Plaintiff; and the Court further

**ORDERS** that the following claims are **dismissed without prejudice**: (1) the claim that Defendants violated Plaintiff's right of access to the courts; and (2) the claim that Defendants subjected Plaintiff to unconstitutional conditions of confinement by denying him recreation; and the Court further

**ORDERS** that Defendants Gravlin, Demarse, Lira, Trombly, Otis and Belleinier shall file and serve an answer to Plaintiff's conditions of confinement claim regarding his exposure to feces in accordance with the Federal Rules of Civil Procedure.

**IT IS SO ORDERED.**

Dated: May 25, 2010  
Syracuse, New York

  
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Frederick J. Scullin, Jr.  
Senior United States District Court Judge