

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

BENJAMIN SMITH,

Plaintiff,

v.

**No. 9:09-CV-729
(TJM/DRH)**

**UNITED STATES OF AMERICA; DAN
PETERSON, Factory Manager, FCI Ray
Brook; SUSAN KEIFFER, Case Manager,
FCI Ray Brook; FEDERAL CORRECTIONAL
INDUSTRIES (UNICOR), FCI Florence,
Florence, Colorado; MR. FELNER,
Unit Manager, FCI Ray Brook; D.
KIRKBY, Factory Foreman, FCI Ray Brook;
MR. LUCAS, Case Manager, FCI Ray
Brook; and T.R. CRAIG, Facility
Superintendent, FCI Ray Brook,**

Defendants.

**THOMAS J. McAVOY,
Senior United States District Judge**

DECISION & ORDER

I. INTRODUCTION

This *pro se* action brought under Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388 (1971), was referred to the Hon. Judge David R. Homer, United States Magistrate Judge, for a Report and Recommendation. No objections to the Report-Recommendation and Order dated February 3, 2011 have been filed, and the time to do so has expired. Furthermore, after examining the record, this Court has determined that

the Report-Recommendation and Order is not subject to attack for plain error or manifest injustice.

II. CONCLUSION

Accordingly, the Court adopts the Report-Recommendation and Order for the reasons stated therein. It is therefore **ORDERED** that Defendants' motion for summary judgment (Dkt. No. 23) is **GRANTED IN PART AND DENIED IN PART**.

The motion is **GRANTED** as to the claims for:

- A. Interference with mail;
- B. Retaliation/false disciplinary reports;
- C. Eighth Amendment claim of inadequate medical care; and
- D. Product liability/negligence under the FTCA,

and these claims are **DISMISSED**.

The motion is **DENIED** as to the claims for:

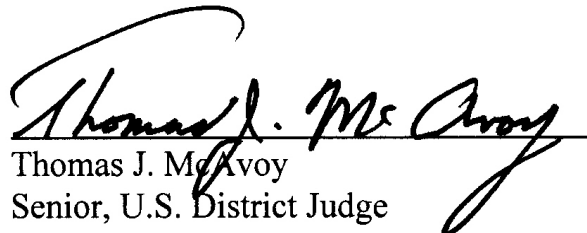
- A. A biased hearing officer; and
- B. Conditions of confinement.

Based on this determination, all defendants are **TERMINATED except Defendant**

Felner.

IT IS SO ORDERED

DATED: March 1, 2011


Thomas J. McAvoy
Senior, U.S. District Judge