

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SANTIAGO GOMEZ,

Plaintiff,

No. 9:14-CV-201

-v-

HAROLD D. GRAHAM, Superintendent,
Auburn Correctional Facility; and D. MURRAY,
Correctional Officer, Auburn Correctional Facility,

Defendants.

APPEARANCES:

OF COUNSEL:

SANTIAGO GOMEZ
Plaintiff pro se
13-A-2110
Franklin Correctional Facility
P.O. Box 10
Malone, NY 12953

DAVID N. HURD
United States District Judge

DECISION and ORDER

Pro se plaintiff Santiago Gomez brought this civil rights action pursuant to 42 U.S.C. § 1983. On October 3, 2014, the Honorable David E. Peebles, United States Magistrate Judge, advised by Report-Recommendation that plaintiff's second amended complaint be accepted for filing, with the exception of his unlawful search, conspiracy, due process, and medical indifference claims. No objections to the Report-Recommendation were filed.

Based upon a careful review of the entire file and the recommendations of the Magistrate Judge, the Report-Recommendation is accepted in whole. See 28 U.S.C.

§ 636(b)(1).

Therefore, it is

ORDERED that

1. Plaintiff's second amended complaint (Dkt. No. 14) is accepted for filing, and the Clerk add the newly named defendants in the second amended complaint to the docket sheet;

2. Plaintiff's first, third, and seventh causes of action are DISMISSED without prejudice,¹ leaving intact plaintiff's retaliation claim (Count II) against defendants Murray, Wright, Borden, Neale, Fletcher, and Hahn; excessive force claim (Count IV) against defendants Borden, Neale, Fletcher, and Hahn; conditions of confinement claim (Count V) against defendants Murray, Wright, Hahn, and Graham; and failure to intervene claim (Count VI) against defendant Hahn;

3. Plaintiff's motion for a temporary restraining order and a preliminary injunction (Dkt. No. 2) is DENIED as moot;

4. The Clerk is directed to issue summonses and forward them, along with copies of the complaint, to the United States Marshal for service upon the named defendants;

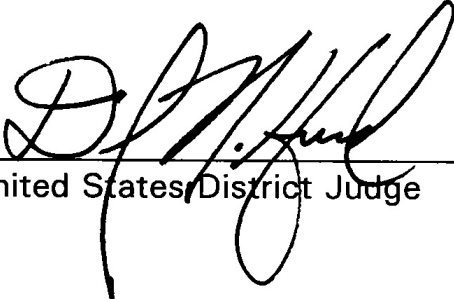
5. The defendants are directed to file a response to the complaint as provided

¹ The dismissal of plaintiff's unlawful search, conspiracy, due process, and deliberate medical indifference causes of action are without prejudice to plaintiff's right to file a motion for leave to file a further amended complaint that corrects the pleading deficiencies described herein. Plaintiff is advised that any such motion must be supported by a proposed amended complaint that is a complete pleading intended to replace and supersede the second amended complaint in its entirety. Any proposed amended complaint must allege claims of misconduct or wrongdoing against each named defendant that plaintiff has a legal right to pursue, and over which this court may properly exercise jurisdiction, and must comply with the pleading requirements of Rules 8 and 10 of the Federal Rules of Civil Procedure.

for in the Federal Rules of Civil Procedure following service of process on the defendants; and

6. All pleadings, motions and other documents relating to this action be filed with the Clerk of the United States District Court, Northern District of New York, 7th Floor, Federal Building, 100 S. Clinton St., Syracuse, New York 13261-7367. Any paper sent by a party to the court or the clerk must be accompanied by a certificate showing that a true and correct copy of same was mailed to all opposing parties or their counsel. Any document received by the clerk or the court which does not include a certificate of service showing that a copy was served upon all opposing parties or their attorneys will be returned, without processing. Plaintiff must comply with any requests by the Clerk's Office for any documents that are necessary to maintain this action. All parties must comply with Local Rule 7.1 of the Northern District of New York in filing motions, which must be returnable before the assigned district judge with proper allowance for notice as required by the Rules. Plaintiff is also required to promptly notify the clerk's office and all parties or their counsel of any change in plaintiff's address; his failure to do so will result in the dismissal of this action.

IT IS SO ORDERED.


United States District Judge

Dated: October 29, 2014
Utica, New York.