

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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FREDERICK DIAZ,

Plaintiff,

-v-

9:15-CV-776  
(DNH/DJS)

STEPHANIE PELO, Grievance Supervisor,  
Great Meadow Correctional Facility; C. FRASER,  
Sergeant, Great Meadow Correctional Facility;  
KENNETH MCKEIGHAN, Industry  
Superintendent, Great Meadow Correctional  
Facility; RODNEY EASTMAN, Deputy  
Superintendent of Security, Great Meadow  
Correctional Facility; CHRISTOPHER MILLER,  
Superintendent, Great Meadow Correctional  
Facility; and RACHEL A. YOUNG, Acting  
Director of the Office of Guidance & Counseling,

Defendants.

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APPEARANCES:

FREDERICK DIAZ  
86-B-2129  
Plaintiff pro se  
Elmira Correctional Facility  
P.O. Box 500  
Elmira, NY 14902

HON. ERIC T. SCHNEIDERMAN  
New York State Attorney General - Albany  
Attorney for Defendants  
The Capitol  
Albany, NY 12224

RYAN L. ABEL, ESQ.  
Ass't Attorney General

DAVID N. HURD  
United States District Judge

## DECISION and ORDER

Pro se plaintiff Frederick Diaz brought this civil rights action pursuant to 42 U.S.C. § 1983. On February 15, 2019, the Honorable Daniel J. Stewart, United States Magistrate Judge, advised by Report-Recommendation that defendants' motion for summary judgment be granted in part and denied in part and that plaintiff's cross-motion for summary judgment be denied. Plaintiff and defendant Young timely filed objections to the Report-Recommendation.

Based upon a de novo review of the portions of the Report-Recommendation to which the parties objected, the Report-Recommendation is accepted and adopted in all respects.

See 28 U.S.C. § 636(b)(1).

Therefore, it is

ORDERED that

1. Defendants' motion for summary judgment is GRANTED in part and DENIED in part;

2. Defendants' motion for summary judgment with respect to plaintiff's due process claim against defendant Young is DENIED and that claim will proceed to trial;

3. Defendants' motion for summary judgment with respect to all other claims is GRANTED;

4. The following claims are DISMISSED:

a. due process claim against defendant Pelo for deduction of \$1,660.20 from plaintiff's inmate account;

b. retaliation claim against defendants Pelo and Young for deducting \$1,660.20 from plaintiff's inmate account;

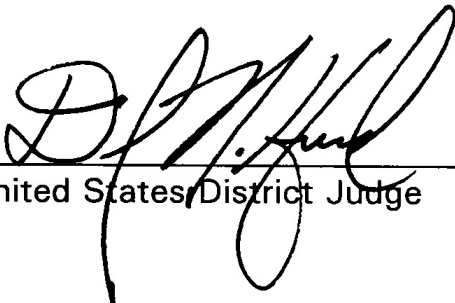
- c. retaliation claim against defendants Fraser and Eastman for issuing plaintiff a false IPC report;
- d. due process claim against defendant McKeighan regarding the IPC and IGRC impeachment hearings;
- e. retaliation claim against defendant McKeighan for affirming plaintiff's IPC placement;
- f. retaliation claim against defendants Eastman and Miller for upholding plaintiff's IPC placement; and
- g. retaliation claim against defendant Pelo for issuing plaintiff a false misbehavior report;

5. Plaintiff's cross-motion for summary judgment is DENIED;

6. Trial on the sole remaining due process claim against defendant Young is scheduled for Tuesday, August 6, 2019, in Utica, New York with pre-trial papers due on or before 12:00 p.m. on Tuesday, July 23, 2019; and

7. Plaintiff's prior request for pro-bono trial counsel, ECF No. 58, is considered renewed and GRANTED and counsel will be assigned in due course.

IT IS SO ORDERED.



United States District Judge

Dated: March 28, 2019  
Utica, New York.