

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

EVAN NIX,

Plaintiff,

v.

**9:16-CV-828
(FJS/TWD)**

**JOHN DOE 1, Correction Officer; JANE DOE 2,
Nurse, Washington Correctional Facility;
JOHN DOE 3, Correction Officer; JOHN DOE 4,
Correction Officer; JANE DOE 6, Nurse,
Washington Correctional Facility; EDIE R.,
Nurse Aide, Washington Correctional Facility;
JOHN DOE 8, Correction Officer;
CORRECTION OFFICER STEPHEN
LESTER; and CORRECTION OFFICER
VICTOR NORTON,**

Defendants.

APPEARANCES

OF COUNSEL

LAW OFFICES OF DEVON M. WILT
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New York, New York 10038
Attorneys for Plaintiff

DEVON M. WILT, ESQ.

**OFFICE OF THE NEW YORK
STATE ATTORNEY GENERAL**
The Capitol
Albany, New York 12224
Attorneys for Defendants

NICOLE E. HAIMSON, AAG

SCULLIN, Senior Judge

ORDER

Plaintiff commenced this civil rights action against Defendants pursuant to 42 U.S.C.

§ 1983. Defendants Correction Officer Norton and Correction Officer Lester, the only two

Defendants whom Plaintiff has served with the second amended complaint, moved to dismiss some of Plaintiff's claims against them for failure to state a claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. *See* Dkt. No. 32. Plaintiff opposed that motion. *See* Dkt. No. 40. This Court referred that motion to Magistrate Judge Dancks for a report and recommendation. *See* Dkt. No. 33. In a Report and Recommendation dated August 4, 2017, Magistrate Judge Dancks recommended that the Court grant the motion. *See, generally,* Dkt. No. 43. Neither Plaintiff nor Defendants filed objections to that recommendation.

When a party does not object to a magistrate judge's report-recommendation, the court reviews that report-recommendation for clear error or manifest injustice. *See Linares v. Mahunik*, No. 9:05-CV-625, 2009 WL 3165660, *10 (N.D.N.Y. July 16, 2009) (citation and footnote omitted). After reviewing a magistrate judge's recommendations, the district court may accept, reject or modify those recommendations. *See* 28 U.S.C. § 636(b)(1). The Court has reviewed Magistrate Judge Dancks' August 4, 2017 Report and Recommendation for clear error and manifest injustice; and, finding none, the Court hereby

ORDERS that Magistrate Judge Dancks' August 4, 2017 Report and Recommendation, *see* Dkt. No. 43, is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further

ORDERS that Defendant Norton and Lester's motion, *see* Dkt. No. 32, is **GRANTED**; and the Court further

ORDERS that Plaintiff's claims against Defendants Norton and Lester alleging that they failed to intervene and protect Plaintiff from inmate Sanders' assault are **DISMISSED without prejudice**; and the Court further

ORDERS that Plaintiff's claims against Defendants Norton and Lester alleging that they

were deliberately indifferent to Plaintiff's medical needs are **DISMISSED without prejudice**; and the Court further

ORDERS that Plaintiff's claims against Defendants Norton and Lester alleging verbal harassment and threats are **DISMISSED with prejudice**; and the Court further

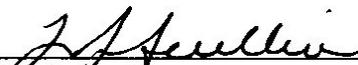
ORDERS that the following claims against all Defendants are **DISMISSED with prejudice sua sponte**: (1) § 1983 official capacity claims; (2) assault and battery claims; (3) claims under the Fifth and Sixth Amendments; and (4) claims under 18 U.S.C. § 241; and the Court further

ORDERS that the following claims against all Defendants are **DISMISSED without prejudice sua sponte**: (1) claims under the Fourth Amendment; (2) conspiracy claims under 42 U.S.C. § 1983 and 42 U.S.C. § 1985; and (3) claims under 42 U.S.C. § 1981; and the Court further

ORDERS that this matter is referred to Magistrate Judge Dancks for all further pretrial matters.

IT IS SO ORDERED.

Dated: August 21, 2017
Syracuse, New York



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