

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

KEVIN DAMION CRICHLLOW,

Plaintiff,

v.

**9:17-cv-00194
(TJM/TWD)**

BRIAN FISCHER, et al.,

Defendants.

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

DECISION & ORDER

I. INTRODUCTION

This pro se action brought pursuant to 42 U.S.C. § 1983 was referred to the Hon. Thérèse Wiley Dancks, United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). In her September 5, 2017 Report-Recommendation and Order (Dkt. No. 233), Magistrate Judge Dancks recommends that Defendants' motion for summary judgment in lieu of an answer (Dkt. No. 177) be granted, and that Plaintiff's motion for substitution of a party (Dkt. No. 231) be denied as moot. Plaintiff filed objections to the Report-Recommendation and Order. See Obj., Dkt. No. 236. On November 29, 2017, Plaintiff filed a motion for a preliminary injunction. Dkt. No. 238.

II. DISCUSSION

a. Objections to Report-Recommendation and Order

When objections to a magistrate judge's report and recommendation are lodged, the district court makes a "*de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." See 28 U.S.C. § 636(b)(1); see also United States v. Male Juvenile, 121 F.3d 34, 38 (2d Cir. 1997) (The Court must make a *de novo* determination to the extent that a party makes specific objections to a magistrate's findings.). After reviewing the report and recommendation, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions." 28 U.S.C. § 636(b).

Having considered Plaintiff's objections and having completed a *de novo* review of the issues raised by the objections, the Court has determined to accept Magistrate Judge Dancks's recommendations for the reasons stated in her thorough report. Accordingly, Defendants' motion for summary judgment in lieu of an answer (Dkt. No. 177) is granted, and Plaintiff's motion for substitution of a party (Dkt. No. 231) is denied as moot.

b. Preliminary Injunction

Plaintiff's motion for a preliminary injunction complains of conduct subsequent to the allegations underlying the claims in this action, see Dkt. No. 238-1, pp. 1-3 (complaining about his medical treatment in October 2017), p. 5 (claiming that he was retaliated against because he filed "grievances ... with DOCS Office of Special Investigations since 2016-2017"), and appears to assert new claims for retaliation and denial of medical care based

on this subsequent conduct. See id., pp. 3-5. Plaintiff cannot amend the Amended Complaint by bringing a motion for a preliminary injunction complaining about subsequent conduct. Accordingly, the motion for a preliminary injunction is denied without prejudice to being asserted in a new action complaining about the conduct underlying the motion.

IV. CONCLUSION

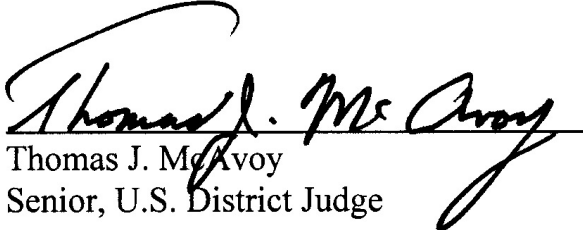
For the reasons discussed above, the Court accepts and adopts Magistrate Judge Dancks's Report-Recommendation and Order (Dkt. No. 233) in its entirety. Defendants' motion for summary judgment in lieu of an answer (Dkt. No. 177) is **GRANTED**, and the action is **DISMISSED** against all remaining Defendants, including those who have not been specifically identified¹ and/or served. Further, Plaintiff's motion for substitution of a party (Dkt. No. 231) is **DENIED AS MOOT**.

Plaintiff's motion for a preliminary injunction (Dkt. No. 238) is **DENIED WITHOUT PREJUDICE** to being asserted in a new action complaining about the conduct underlying the motion.

The Clerk of the Court may enter final judgment and close the file in this matter.

IT IS SO ORDERED.

Dated: December 18, 2017


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

¹Plaintiff names several "Doe" defendants, as well as defendants identified only by position or badge number (such as defendant "B-3 A Officer S.D.U.").