

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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HOWARD AYERS,

Plaintiff,

-v-

9:17-CV-1229  
(DNH/TWD)

ZACHARIE TROMBLEY, Food Service  
Administrator, Barehill Correctional Facility,  
formerly known as D. Trombley and HENRY  
BERNIER, Civilian Cook, Barehill Correctional  
Facility, formerly known as Beriner,

Defendants.

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APPEARANCES:

OF COUNSEL:

HOWARD AYERS  
Plaintiff pro se  
502 W. 213 Street 3C  
New York, NY 10034

HON. LETITIA JAMES  
Attorney General for the State of New York  
Attorney for Defendant  
The Capitol  
Albany, NY 12224

KONSTANDINOS D. LERIS, ESQ.  
Ass't Attorney General

DAVID N. HURD  
United States District Judge

**DECISION and ORDER**

Pro se plaintiff Howard Ayers brought this civil rights action pursuant to 42 U.S.C. § 1983. On July 8, 2019, the Honorable Thérèse Wiley Dancks, United States Magistrate Judge, advised by Report-Recommendation that defendants' motion for summary judgment

be granted in part and denied in part. Specifically, Magistrate Judge Dancks recommended that the motion be granted as to defendant Trombley on plaintiff's First Amendment retaliation claim based on exhaustion grounds but that the motion be denied as to defendants Trombley and Bernier on plaintiff's First Amendment Free Exercise claims based on qualified immunity grounds. Defendants timely filed objections to the Report-Recommendation with respect to the qualified immunity issue.

Based upon a de novo review of the portions of the Report-Recommendation to which defendants 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;

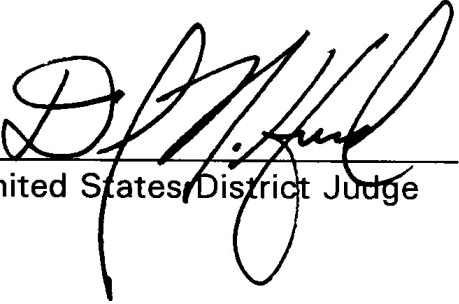
2. The motion is GRANTED with respect to plaintiff's First Amendment retaliation claim against defendant Trombley based on exhaustion grounds and that claim is DISMISSED;

3. The motion is DENIED without prejudice with respect to plaintiff's First Amendment Free Exercise claims against defendants Trombley and Bernier based on qualified immunity grounds and those claims shall proceed to trial;

4. Any request for pro bono trial counsel shall be filed within thirty (30) days of the date of this Decision and Order; and

5. Trial is scheduled for February 10, 2020, in Utica, New York.

IT IS SO ORDERED.



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United States District Judge

Dated: August 19, 2019  
Utica, New York.