

2017 WL 6459512

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United States District Court, N.D. New York.

Kevin Damion CRICHLow, Plaintiff,

v.

Brian FISCHER, et al., Defendants.

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

Signed 12/18/2017

**Attorneys and Law Firms**

Kevin Damion Crichlow, Romulus, NY, pro se.

Nicole E. Haimson, New York State Attorney General,  
Albany, NY, for Defendants.

Attorney General, Dept. of Law, Albany, NY, pro se.

**DECISION & ORDER**

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

**I. INTRODUCTION**

\*1 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.

**III. 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 identified<sup>1</sup> and/or served. Further, Plaintiff's motion for substitution of a party (Dkt. No. 231) is **DENIED AS MOOT**.

\*2 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.

**IT IS SO ORDERED.**

**All Citations**

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

Not Reported in Fed. Supp., 2017 WL 6459512

### Footnotes

- 1 Plaintiff 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.").