

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

Michael Gordon,)	
)	
Plaintiff,)	ORDER ADOPTING REPORT
)	AND RECOMMENDATIONS
vs.)	
)	Case No. 1:15-cv-026
Lean, K. Bertsch, Director, et. al.,)	
)	
Defendants.)	

The Plaintiff, Michael Gordon (“Gordon”), is a prisoner serving a federal sentence. He initiated this civil rights action under 42 U.S.C. § 1983 while being housed at the North Dakota State Penitentiary (“NDSP”). He has since been removed from the NDSP, presumably by federal prison officials, and is now being incarcerated at the Mississippi State Penitentiary at Parchman, Mississippi.

Gordon initiated this civil rights action against the Defendants for violating his Eighth Amendment and other Constitutional rights on or about March 31, 2015, with the filing of his First Amended Complaint. See Docket No. 12. Magistrate Judge Charles S. Miller, Jr., conducted an initial screening of the First Amended Complaint pursuant to 28 U.S.C. § 1915A and issued a Report and Recommendation on October 30, 2015, wherein Judge Miller noted a number of deficiencies in the First Amended Complaint. As part of his recommendation, Judge Miller gave Gordon the opportunity to amend his complaint. A Second Amended Complaint was filed on November 24, 2015. See Docket No. 30. Judge Miller screened the Second Amended Complaint and issued a second Report and Recommendation on January 25, 2016. See Docket No. 32. Judge Miller recommended Gordon be allowed to proceed with some of his claims while other claims should be

dismissed. See Docket No. 32. The parties were given fourteen (14) days to file any objections to the second Report and Recommendation. No objections were filed.

The Court has carefully reviewed the entire record including both Report and Recommendations and the relevant case law and finds the Report and Recommendations to be persuasive. Accordingly, the Court **ADOPTS** both the Report and Recommendations (Docket Nos. 28 and 32) in their entirety and makes the following **ORDER**:

1. Gordon will be allowed to proceed as to defendants Dr. John Hagan and Jessica Wilkens in their individual capacities only with respect to the following Eighth Amendment deliberate indifference claims:
 - (a) failure to provide him a colonoscopy in light of his risk for colon cancer;
 - (b) inadequate treatment for Hepatitis C;
 - (c) inadequate treatment for allegedly very painful shoulder problems; and
 - (d) inadequate treatment for allegedly very painful back problems.
2. Gordon will be permitted to proceed against defendants Todd Flanagan, Mark Schwer, Corky Stromme, Cory Wald, Steve Heit, Craig Thuerer, Justin Helgeson, Jamie Pederson, Jody Kulman, Paul Belisle, and Steve Forster, all in their individual capacities only, with respect to the claims of retaliation in paragraphs 65-78 of the Second Amended Complaint.
3. Any defendants or claims not covered by the foregoing are dismissed without prejudice. The caption of this action will be amended so that the named defendants will be only the following: Dr. John Hagan, Jessica Wilkens, Todd Flanagan, Mark Schwer, Corky Stromme, Cory Wald, Steve Heit, Craig Thuerer, Justin Helgeson,

Jamie Pederson, Jody Kulman, Paul Belisle, and Steve Foster.

4. The Clerk's office is **ORDERED** to effectuate service of the summons and the Second Amended Complaint upon the defendants in accordance with Rule 4 of the Federal Rules of Civil Procedure and, if necessary, service will be made by the United States Marshals Service

IT IS SO ORDERED.

Dated this 18th day of February, 2016.

/s/ Daniel L. Hovland
Daniel L. Hovland, District Judge
United States District Court