

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROBERT AUSTIN,

Plaintiff,

vs.

Civil Action 2:12-CV-983
Judge Sargus
Magistrate Judge King

JOHN KASICH, et al.,

Defendants.

ORDER

Plaintiff Robert Austin and another inmate, Benjamin Hendricks, filed an action against multiple defendants. See *Hendricks v. Kasich*, Civil Action No. 2:12-cv-729.¹ The Court, finding that plaintiff Austin and inmate Hendricks were improperly joined as party plaintiffs, directed the Clerk to open a separate case for the claims of plaintiff Austin, resulting in this litigation, Civil Action No. 2:12-cv-983. *Initial Screening Report and Recommendation*, Doc. No. 4, p. 2 ("*Report and Recommendation*").

On October 23, 2012, the United States Magistrate Judge issued a *Report and Recommendation*, finding that the *Complaint* failed to give any individual defendant fair notice of a claim that he or she denied plaintiff Austin needed treatment for a serious medical need. *Report and Recommendation*, p. 12. More specifically, the *Complaint* does not allege that defendant John Gardner refused to treat plaintiff's ulcers at any time nor, if he had, the date of that refusal. *Id.* (citing

¹Plaintiffs identified eight individual defendants by name and apparently referred to fifty unidentified John/Jane Does. *Complaint*, Doc. No. 3.

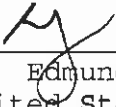
Complaint, ¶¶ 79-85). However, the *Report and Recommendation* concluded that, at the initial screening stage, other allegations in the *Complaint* were sufficient to state a claim against defendants John Kasich and Gary Mohr. *Id.* at 12-13 (citing *Complaint*, ¶¶ 90, 95-96). The *Report and Recommendation*, directing the United States Marshal Service to serve, *inter alios*, defendants Kasich and Mohr, ordered these defendants to respond to the *Complaint* within forty-five (45) days of being served. *Id.* at 13-14. Finally, the Magistrate Judge also recommended that defendants Mona Parks, Dr. Hale, Dr. Khan and Anthony Ayres be dismissed. *Id.* at 13.

The parties were specifically advised of their right to object to the *Report and Recommendation* and of the consequences of their failure to do so. There has nevertheless been no objection to the *Report and Recommendation*.

The *Report and Recommendation* is hereby **ADOPTED** and **AFFIRMED**. Defendants Parks, Hale, Khan and Ayres are **DISMISSED**. Defendants Eddy and Gardner, against whom plaintiff Austin states no claim, are also **DISMISSED**. In sum, plaintiff Austin's claims may proceed only as against defendants Kasich and Mohr.

11-20-2012

Date



Edmund A. Sargus, Jr.
United States District Judge