

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<p><b>ANDRE LIVINGSTON,</b> <b>Plaintiff,</b></p> <p style="text-align:center"><b>v.</b></p> <p><b>JOHN DOE APPEL, et al.</b> <b>Defendant.</b></p>	<p style="text-align:center"><b>CIVIL ACTION</b></p> <p style="text-align:center"><b>NO. 11-2764</b></p>
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**ORDER RE CORRECTIONAL MEDICAL INC.'S MOTION TO DISMISS AND LT.  
EDWARD APPEL AND WARDEN JULIO M. ALGARIN'S MOTION TO DISMISS  
PLAINTIFF'S COMPLAINT OR, IN THE ALTERNATIVE FOR SUMMARY  
JUDGMENT**

**AND NOW**, this 5<sup>th</sup> day of December, 2014, upon consideration of Defendant Correctional Medical Care, Inc.'s (captioned as "Medical Department") Motion to Dismiss (ECF No. 7), Defendants Lt. Edward Appel and Warden Julio Algarin's Motion to Dismiss or, in the Alternative, for Summary Judgment (ECF No. 8), Plaintiff's Response (titled "Motion to Dismiss the Motion of Defendants") (ECF No. 26), and Defendants Lt. Edward Appel and Warden Julio Algarin's Reply in support of their motion (ECF No. 27), it is hereby **ORDERED** that:

1. Defendant Correctional Medical Care, Inc.'s Motion (ECF No. 7) is **GRANTED**;
2. Defendants Lt. Edward Appel and Warden Julio Algarin's Motion to Dismiss (ECF No. 8) is **GRANTED IN PART**, as to Defendant Warden Julio Algarin, and **DENIED IN PART**, as to Defendant Lt. Edward Appel;
3. The parties shall take discovery initially on the issue of exhaustion of administrative remedies within sixty (60) days of the entry of this Order, with leave for Defendants

to renew their motion for summary judgment limited to that issue at the end of the sixty-day period;

4. Plaintiff is granted leave to file an amended complaint within thirty (30) days.

**BY THE COURT:**

**/s/ Michael M. Baylson**

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**MICHAEL M. BAYLSON, U.S.D.J.**

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