

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

<b>ERIC LYONS,</b>	:	<b>CIVIL ACTION NO. 1:13-CV-2952</b>
	:	
<b>Plaintiff</b>	:	<b>(Chief Judge Conner)</b>
	:	
<b>v.</b>	:	
	:	
<b>JOHN WETZEL, et al.,</b>	:	
	:	
<b>Defendants</b>	:	

**ORDER**

AND NOW, this 6th day of May, 2015, upon consideration of the lengthy report (Doc. 48) of Chief Magistrate Judge Martin C. Carlson, recommending the court grant in part and deny in part defendants’ collective motion (Doc. 26) to dismiss the *pro se* plaintiff’s complaint (Doc. 1), wherein Judge Carlson opines that plaintiff does not sufficiently state personal involvement in an alleged constitutional violation by John Wetzel, Joseph Kazarauskas, Sergeant Gandy, Lieutenant Daniel Mosier, CO I. Maye, and Captain Pall, compelling dismissal of said defendants, but recommends that the balance of plaintiff’s claims survive defendants’ motion,<sup>1</sup> and, following an independent review of the record, the court being in agreement with the magistrate judge’s findings, and the court noting that plaintiff has objected

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<sup>1</sup> Defendants also seek dismissal of perceived “failure to respond” and “deprivation of property” claims raised by plaintiff. In his report, Judge Carlson construes plaintiff’s allegations regarding grievances and deprivation of television, radio, and typewriter privileges as elements of his retaliation claim, rather than freestanding Section 1983 causes of action. In a responsive filing, plaintiff confirms Judge Carlson’s construction of his pleading and asserts that he did not intend these allegations as standalone constitutional claims. (See Doc. 53 at 10-12).

(Doc. 53)<sup>2</sup> to the report, and finding plaintiff's objection to be without merit and squarely addressed by Judge Carlson's report, it is hereby ORDERED that:

1. The report (Doc. 48) of Chief Magistrate Judge Carlson is ADOPTED in its entirety.
2. Defendants' motion (Doc. 26) to dismiss is GRANTED to the extent it seeks dismissal of defendants Wetzel, Kazarauskas, Gandy, Maye, Mosier, and Pall for lack of personal involvement. The motion (Doc. 26) is DENIED in all other respects.
3. The Clerk of Court shall terminate defendants Wetzel, Kazarauskas, Gandy, Maye, Mosier, and Pall as defendants in the above-captioned action.
4. This matter is REMANDED to Chief Magistrate Judge Carlson for further pretrial management.

/S/ CHRISTOPHER C. CONNER  
Christopher C. Conner, Chief Judge  
United States District Court  
Middle District of Pennsylvania

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<sup>2</sup> When a party objects to a magistrate judge's report and recommendation, the district court performs a *de novo* review of the contested portions of the report. See Behar v. Pa. Dep't of Trans., 791 F. Supp. 2d 383, 389 (M.D. Pa. 2011) (citing Sample v. Diecks, 885 F.2d 1099, 1106 n.3 (3d Cir. 1989); 28 U.S.C. § 636(b)(1)(c)). The court reviews uncontested portions of the report for "clear error on the face of the record." Cruz v. Chater, 990 F. Supp. 375, 376-78 (M.D. Pa. 1998).