

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

GABRIEL ROSA-DIAZ,	:	Civil No. 1:16-cv-2303
	:	
Plaintiff,	:	
	:	
v.	:	
	:	Magistrate Judge Carlson
LAUREL HARRY, et al.,	:	
	:	Judge Sylvia H. Rambo
Defendant.	:	

MEMORANDUM

Before the court is a second report and recommendation filed by the magistrate judge. Previously, the magistrate judge filed a report and recommendation regarding the initial complaint wherein he recommended that the complaint be dismissed but that Plaintiff Rosa-Diaz (“Diaz”) be given the opportunity to file an amended complaint. On January 31, 2017, this court granted Diaz leave to file an amended complaint and remanded the case back to the magistrate judge for further proceedings. (Doc. 16.)

In his second report and recommendation (Doc. 17), the magistrate judge recommends that the claims against the supervisory personnel, *i.e.*, Zobitne, Moore, Heist, Harry and Woodside, be dismissed. The magistrate judge cited appropriate case law that government officials cannot be held liable for the unconstitutional conduct of subordinates under the theory of *respondeat superior*. (Doc. 17, p. 13 (citing *Monell v. New York City Dept. of Social Servs.*, 436 U.S.

658, 691 (1978).) He explained that “personal involvement must be alleged and is only present where the supervisor directed the actions of supervisees or actually knew of the actions and acquiesced in them.” (*Id.* at p. 14 (quoting *Rode v. Dellarciprete*, 845 F.2d 1195, 1207 (3d Cir. 1988).) No such proof was set forth in the complaint.

The magistrate further recommended that Plaintiff’s Eighth Amendment Conditions of confinement claims against Defendants Tobias, Weiss, Horner, Gouse and Maxwell be dismissed. On these issues, the claims failed to show that the defendants’ actions amounted to “deliberate indifference to the inmate’s health,” in that they acted with both a culpable state of mind and that the physical conditions of confinement shocked the conscience and departed from minimal civilized standards of life’s necessities. (*Id.* at p. 18 (citing *Atkinson v. Taylor*, 316 F.3d 257 (3d Cir. 2003) and *Farmer v. Brennan*, 511 U.S. 825 (1994)).) After a review of the report and recommendation and the claims presented in the amended complaint, the court will adopt the report and recommendation.

An appropriate order will issue.

s/Sylvia H. Rambo
SYLVIA H. RAMBO
United States District Judge

Dated: April 6, 2017