

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

JOE DELGADILLO,	:	
	:	
Plaintiff	:	CIVIL ACTION NO. 3:16-0041
	:	
v.	:	(MANNION, D.J.) (MEHALCHICK, M.J.)
	:	
COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF CORRECTIONS, et. al.,	:	
	:	
Defendants	:	

ORDER

In accordance with the memorandum issued this same day, **IT IS HEREBY ORDERED THAT:**

- (1) the report and recommendation of Judge Mehalchick, (**Doc. 23**), is **ADOPTED IN ITS ENTIRETY**;
- (2) The DOC defendants' motion to dismiss the plaintiff's complaint, (**Doc. 14**), is **GRANTED IN PART AND DENIED IN PART**.
- (3) Defendant PA Flatt's motion to dismiss the plaintiff's complaint, (**Doc. 18**), is **GRANTED**.
- (4) The plaintiff's excessive force claim against Sergeant Bocci, *Monell* claim, and claim directly under the Pennsylvania Constitution are **DISMISSED WITH PREJUDICE** for failure to state a claim pursuant to Fed.R.Civ.P. 12(b)(6).
- (5) The plaintiff's Eighth Amendment deliberate indifference

claims against PA Flatt, Sergeant Bocci, Superintendent Harry and John Doe CO No. 1 are **DISMISSED WITHOUT PREJUDICE** for failure to state a claim pursuant to Fed.R.Civ.P. 12(b)(6).

- (6) The plaintiff is allowed to proceed as to his Eighth Amendment deliberate indifference claims against John Doe CO Nos. 2-10.
- (7) The Clerk of Court is directed to **TERMINATE** The Pennsylvania Department of Corrections and SCI Camp Hill as defendants from this action.
- (8) Since the plaintiff has filed his amended complaint, (Doc. 24), the remaining defendants shall file their response within twenty-one (21) days from the date of this order.
- (9) The matter is remanded to Judge Mehalchick for further proceedings.

s/ Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

Date: March 22, 2017

O:\Mannion\shared\MEMORANDA - DJ\CIVIL MEMORANDA\2016 MEMORANDA\16-0041-01-ORDER.wpd