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

HENRY UNSELD WASHINGTON,	**:**	**Civil No. 4:08-CV-1283**
	:	
Plaintiff,	**:**	
	:	**(Judge Jones)**
v.	**:**	
	:	**(Magistrate Judge Carlson)**
JAMES GRACE, et al.,	**:**	
	:	
Defendants.	**:**	

REPORT AND RECOMMENDATION

I. Introduction

This case, which has been referred to the Court for case management and pre-trial screening, presents an illustration of the limitations of the court system as a vehicle for addressing the intractable problems of prisoners struggling with acknowledged mental health issues. The Plaintiff, Henry Unseld Washington, is one such inmate, a state prisoner whose many and varied pleadings have disclosed that he has been undergoing longstanding mental health care while in custody.

Over the past two years, Washington made repeated, voluminous filings with this Court. These pleadings have been hundreds of pages in length, have frequently contained more than 300 separate factual averments, and have at different times named more than 150 Defendants in what Washington perceives to be a wide-ranging

conspiracy that spans decades and entails coordinated conduct by hundreds of actors. In some instances, Washington has expressly premised his claims against prison officials on assertions that he has engaged in secret meetings with senior state corrections officials while housed in a psychiatric holding cell in a state prison, and reported misconduct to them. (Doc. 40 , ¶¶ 359, 360; Doc. 47 ¶¶357-362.)

In an effort to assist Washington in framing his issues and concerns in a fashion which would allow the courts to address them in an intelligible fashion, we have repeatedly explained to Washington the necessity of complying with the Federal Rules of Civil Procedure, which require that a complaint be a "short and plain statement" of a cause of action. We have also counseled Washington that we may only consider claims that fall within the period of the statute of limitations, and that he may not bring claims in this Court that relate to events that allegedly occurred in prisons outside the Middle District of Pennsylvania. Finally, we have repeatedly advised Washington that he may not rely upon mere labels and conclusory assertions to state a claim against state officials.

Despite this repeated guidance and advice, Washington has now filed a document, his third amended complaint in this case, (Doc. 47) which still fails to comply with the basic requisites for a valid complaint in federal court. Presented with this latest pleading, we are compelled to conclude that Washington is unable to

conform his pleadings to the requirements set by the law, and that dismissal of this action without further leave to amend is now necessary.

II. Statement of Facts and of the Case

The background of this troubled litigation brought by an admittedly troubled litigant began more than two years ago, on July 7, 2008, when the Plaintiff, a state prisoner proceeding *pro se*, commenced this action by filing a complaint in federal court.(Doc. 1.) Eleven months later, on June 29, 2009, Washington elaborated upon these claims when he filed an amended complaint further detailing his claims and concerns. (Doc. 22.)

The Plaintiff's 2009 amended complaint was a confusing, prolix document. It named approximately 132 Defendants, and set forth 320 factual averments of alleged violations of the Plaintiff's rights. Many of the alleged acts which were the subject of the Plaintiff's July 2009 amended complaint were more than 10 years old, spanning conduct that reached as far back as 1997, and in many instances it was impossible to determine which of the more than 130 named Defendants were alleged to have committed the acts set forth in the complaint. The complaint then alleged that these actions constituted Eighth Amendment violations relating to lack of medical care and use of excessive force by prison officials, due process violations, negligence and medical malpractice.

This Court was initially assigned responsibility to oversee this case on June 23, 2010. After examining the Plaintiff's first amended complaint, on June 24, 2010, we notified the Plaintiff that many of these allegations were subject to dismissal and directed the Plaintiff to file an amended complaint. Our screening order was expressly intended to simplify and add clarity and focus to Washington's complaints. (Doc. 33). Regrettably, the order had just the opposite effect upon Washington.

Washington initially responded to this order by requesting a six-month extension of time in which to file an amended complaint. (Doc. 34.) When we denied this request, (Doc. 35), Washington filed a second amended complaint on August 19, 2010. (Doc. 40.) Far from addressing the concerns originally cited by the Court, Washington's second amended complaint actually exacerbated and compounded those concerns. The second amended complaint named 159 Defendants and contained 368 separately numbered paragraphs. These allegations were detailed in a voluminous 135 pages.[1]

Our scrutiny of these allegations revealed that many of these claims fell far outside the two-year statute of limitations for civil rights matters, an issue previously

[1]Along with this amended complaint, Washington also filed a Motion to Expand the Record (Doc. 39) which listed the 159 Defendants he wished to sue, and a Motion for Court Provision to Indigent Inmate (Doc. 38), which invited the Court to delay proceedings in this case for an additional 18 months as he drafted further submissions to file relating to these Defendants.

noted for Washington, but a defect which remained unaddressed in his latest pleading. Indeed, it appeared that well over one hundred of the separately numbered claims set forth in this second amended complaint involve conduct which preceded July of 2006 and were, therefore, time-barred.

Furthermore, many of Washington's claims appeared to involve a litany of alleged misdeeds at either SCI Greene or SCI Fayette, two state institutions located in the Western District of Pennsylvania. Thus, of the 159 Defendants named in this second amended complaint, approximately 50 Defendants were staff in these prisons which are remote from this Court.

Because Washington's second amended complaint actually compounded the deficiencies previously cited by the Court, and did not provide an intelligible basis for adjudicating any of these constitutional claims, on August 25, 2010 we submitted a report and recommendation which recommended that Washington's second amended complaint be dismissed. (Doc. 41.) That report and recommendation outlined for Washington, once again, the many shortcomings in his pleadings, providing the Plaintiff with a detailed description of those matters which he must correct. (Id.)

Washington's response to this report and recommendation was to file yet another complaint. (Doc. 47.) This complaint is the fourth complaint filed by

Washington in the course of this litigation, and constitutes Washington's third amended complaint in this matter. (Id.)

On November 8, 2010, the district court entered an order adopting our report and recommendation and dismissing in its entirety Washington's second amended complaint. (Doc. 48.) After noting that Washington had filed yet another amended complaint while this the report and recommendation was under review, the district court then remanded this matter to us for a review of Washington's latest amended complaint.

We have now reviewed this pleading, and find that it provides graphic confirmation of Washington's apparent inability to conform to the requirements of the law when filing pleadings in federal courts. While Washington's third amended complaint has fewer pages than his second amended complaint, Compare (Doc. 48, pp.82) with (Doc. 40, pp.135), this result appears to be largely a function of Washington's use of smaller print in drafting the complaint. Thus, the two complaints are substantively identical and the third amended complaint retains all of the fundamental flaws which were previously cited by the court as grounds for dismissal of Washington's prior complaints.

Thus, the third amended complaint, like the second amended complaint and all of Washington's prior pleadings, is a confused, confusing and prolix document. This third amended complaint, like Washington's prior pleadings, attempts to name 159

correctional officials as Defendants. (Doc. 48). Like the prior fatally flawed complaints in this case, this third amended complaint also contains 368 separately numbered paragraphs setting forth various factual averments. (Id.) As was the case with Washington's prior pleadings, many of these averments relate to alleged conduct which falls far beyond the applicable statute of limitations. (Id.) Furthermore, the third amended complaint continues to name defendants and recite claims relating to dozens of alleged events which occurred outside this district, and over which venue is entirely lacking. (Id.) Finally, like his prior complaints, Washington's third amended complaint contains an odd array of assertions and claims, many of which are nothing more than labels and conclusions, and the formulaic recitation of the elements of a cause of actions. As for the remaining averments in the complaint, many of these assertions are either bizarre sexually explicit recitals which are subject to being stricken under Rule 12(f) of the Federal Rules of Civil Procedure, or accounts of various secret meetings that Washington recalls having conducted with prison supervisors while undergoing psychiatric treatment.[2]

Taken together, these assertions do not state a viable cause of action. Rather, they remain the same assortment of fundamentally flawed claims, which we

[2] Furthermore, along with this amended complaint, Washington also filed a Motion for Court Provision to Indigent Inmate (Doc. 44), which invited the Court to delay proceedings in this case for an additional 18 months as he drafted further submissions to file relating to these Defendants.

previously found wanting and which compelled dismissal of this action. Therefore, it is recommended that Washington's third amended complaint (Doc. 48), like his prior similar complaints, be dismissed

II. Discussion

A. Screening of Pro Se Civil Complaints-The Legal Standard

This Court has a statutory obligation to conduct a preliminary review of *pro se* complaints which seek redress against government officials. Specifically, we are obliged to review the complaint pursuant to 28 U.S.C. § 1915A which provides, in pertinent part:

> **(a) Screening**. - The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.
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> **(b) Grounds for dismissal**. - On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint-
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> (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or
>
> (2) seeks monetary relief from a defendant who is immune from such relief.

Under Section 1915A, the Court must assess whether a *pro se* complaint "fails to state a claim upon which relief may be granted." This statutory text mirrors the language of Rule 12(b)(6) of the Federal Rules of Civil Procedure, which provides

that a complaint should be dismissed for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6).

With respect to this benchmark standard for legal sufficiency of a complaint, the United States Court of Appeals for the Third Circuit has aptly noted the evolving standards governing pleading practice in federal court, stating that:

> Standards of pleading have been in the forefront of jurisprudence in recent years. Beginning with the Supreme Court's opinion in Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (12007) continuing with our opinion in Phillips [v. County of Allegheny, 515 F.3d 224, 230 (3d Cir. 2008)]and culminating recently with the Supreme Court's decision in Ashcroft v. Iqbal –U.S.–, 129 S.Ct. 1937 (2009) pleading standards have seemingly shifted from simple notice pleading to a more heightened form of pleading, requiring a plaintiff to plead more than the possibility of relief to survive a motion to dismiss.

Fowler v. UPMC Shadyside, 578 F.3d 203, 209-10 (3d Cir. 2009).

In considering whether a complaint fails to state a claim upon which relief may be granted, the court must accept as true all allegations in the complaint and all reasonable inferences that can be drawn therefrom are to be construed in the light most favorable to the plaintiff. Jordan v. Fox Rothschild, O'Brien & Frankel, Inc., 20 F.3d 1250, 1261 (3d Cir. 1994). However, a court "need not credit a complaint's bald assertions or legal conclusions when deciding a motion to dismiss." Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997). Additionally a court need not "assume that a ... plaintiff can prove facts that the ... plaintiff has not alleged." Associated Gen. Contractors of Cal. v. California State Council of

Carpenters, 459 U.S. 519, 526 (1983). As the Supreme Court held in Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), in order to state a valid cause of action a plaintiff must provide some factual grounds for relief which "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of actions will not do." Id. at 555. "Factual allegations must be enough to raise a right to relief above the speculative level." Id.

In keeping with the principles of Twombly, the Supreme Court has underscored that a trial court must assess whether a complaint states facts upon which relief can be granted when ruling on a motion to dismiss. In Ashcroft v. Iqbal, __U.S. __, 129 S.Ct. 1937 (2009), the Supreme Court held that, when considering a motion to dismiss, a court should "begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth." Id. at 1950. According to the Supreme Court, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Id. at 1949. Rather, in conducting a review of the adequacy of complaint, the Supreme Court has advised trial courts that they must:

> [B]egin by identifying pleadings that because they are no more than conclusions are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.

Id. at 1950.

Thus, a well-pleaded complaint must contain more than mere legal labels and conclusions. Rather, a *pro se* plaintiff's complaint must recite factual allegations which are sufficient to raise the plaintiff's claimed right to relief beyond the level of mere speculation. As the United States Court of Appeals for the Third Circuit has stated:

> [A]fter Iqbal, when presented with a motion to dismiss for failure to state a claim, district courts should conduct a two-part analysis. First, the factual and legal elements of a claim should be separated. The District Court must accept all of the complaint's well-pleaded facts as true, but may disregard any legal conclusions. Second, a District Court must then determine whether the facts alleged in the complaint are sufficient to show that the plaintiff has a "plausible claim for relief." In other words, a complaint must do more than allege the plaintiff's entitlement to relief. A complaint has to "show" such an entitlement with its facts.

Fowler, 578 F.3d at 210-11.

In addition to these pleading rules, a *pro se* prisoner's complaint must comply with the requirements of Rule 8(a) of the Federal Rule of Civil Procedure which defines what a complaint should say and provides that:

> (a) A pleading that states a claim for relief must contain (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support; (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and (3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

Thus, a well-pleaded complaint must contain more than mere legal labels and conclusions. Rather, a *pro se* plaintiff's complaint must recite factual allegations

which are sufficient to raise the plaintiff's claimed right to relief beyond the level of mere speculation, set forth in a "short and plain" statement of a cause of action. Applying these standards, it is recommended that this *pro se* complaint be dismissed for failure comply with the *in forma pauperis* requirements and failure to state a claim upon which relief can be granted.

B. The Law of the Case Doctrine Compels Dismissal of This Third Amended Complaint Which is Substantively Indistinguishable From the Plaintiff's Prior, Dismissed Complaint.

At the outset, the law of the case doctrine calls for dismissal of this third amended complaint, which is substantively indistinguishable from the second amended complaint that was dismissed by the district court on November 8, 2010, upon our prior report and recommendation. "Under the law of the case doctrine, once an issue is decided, it will not be relitigated in the same case, except in unusual circumstances. . . . . The purpose of this doctrine is to promote the 'judicial system's interest in finality and in efficient administration. Todd & Co., Inc. v. S.E.C., 637 F.2d 154, 156 (3d Cir. 1980).' " Hayman Cash Register Co. v. Sarokin, 669 F.2d 162, 165 (3d Cir. 1981). The contours of this settled doctrine were recently described by the United States Court of Appeals for the Third Circuit in the following terms:

> In Arizona v. California, 460 U.S. 605 (1983), the Supreme Court noted:
>
> > Unlike the more precise requirements of res judicata, law of the case is an amorphous concept. As most commonly

> defined, the doctrine posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.
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> Id. at 618 (citations omitted). The "[l]aw of the case rules have developed 'to maintain consistency and avoid reconsideration of matters once decided during the course of a single continuing lawsuit.' " Casey v. Planned Parenthood of Se. Pa., 14 F.3d 848, 856 (3d Cir.1994) (quoting 18 Charles A. Wright, Arthur R. Miller, Edward Cooper, Federal Practice and Procedure § 4478 at 788 (2d ed.1981)).

In re Pharmacy Benefit Managers Antitrust Litigation, 582 F.3d 432, 439 (3d Cir. 2009). It is clear that "[t]he ... doctrine does not restrict a court's power but rather governs its exercise of discretion." Id. (quoting, Pub. Interest Research Group of NJ, Inc. v. Magnesium Elektron Inc., 123 F.3d 111, 116 (3d Cir.1997)) (citations omitted). In exercising that discretion, however, courts should "be loathe to [reverse prior rulings] in the absence of extraordinary circumstances such as where the initial decision was clearly erroneous and would make a manifest injustice." Id.,(quoting Christianson v. Colt Indus. Operating Corp., 486 U.S. 800, 816 (1988)). In addition to that narrow class of cases where the prior ruling was manifestly unjust, the type of "extraordinary circumstances" that warrant a court's exercising its discretion in favor of reconsidering an issue decided earlier in the course of litigation typically exist only where (1) new evidence is available, or (2) a supervening new law has been announced. Id.,(citing, Pub. Interest Research Group of NJ, Inc. v. Magnesium Elektron, Inc., 123 F.3d 111, 117 (3d Cir. 1997)).

In this case the law of the case doctrine compels dismissal of Washington's third amended complaint. While Washington's third amended complaint has fewer pages than his second amended complaint, Compare (Doc. 48, pp.82) with (Doc. 40, pp.135), this result is simply a function of smaller print. Thus, the two complaints are substantively identical and the third amended complaint retains all of the fundamental flaws which were previously cited by the Court as grounds for dismissal of Washington's prior complaints. It is a confused, confusing and prolix document which, like Washington's prior pleadings, attempts to name 159 correctional officials as Defendants. (Doc. 48). Like the prior fatally flawed complaints in this case, this third amended complaint also contains 368 separately numbered paragraphs setting forth various factual averments. (Id.) As was the case with Washington's prior pleadings, many of these averments relate to alleged conduct which falls far beyond the applicable statute of limitations, and Washington continues to name Defendants and recite claims relating to dozens of alleged events which occurred outside this district, and over which venue is entirely lacking. (Id.) Finally, like his prior complaints, Washington's third amended complaint persists in reciting an odd array of assertions and claims, many of which are nothing more than labels and conclusions, and a formulaic recitation of the elements of a cause of actions.

These fundamental flaws previously led the district court on November 8, 2010, to dismiss Washington's prior complaint, which was substantively indistinguishable

from this pleading. That ruling was appropriate, and now constitutes the law of the case in this matter. Since Washington has pointed to no manifest injustice in this prior ruling, and can cite no new evidence or supervening change in the law which would permit the re-filing of these discredited claims, under the law of the case doctrine this latest complaint must also be dismissed.

C. Washington's Third Amended Complaint Still Fails to Comply with Rule 8's Requirement that a Complaint Contain a "Short and Plain" Statement of a Cause of Action

In addition, dismissal of this third amended complaint is warranted because Washington's third amended complaint, like his prior three complaints, still plainly fails to comply with Rule 8's basic injunction that: "A pleading that states a claim for relief must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief."

It is well-settled that: "[t]he Federal Rules of Civil Procedure require that a complaint contain 'a short and plain statement of the claim showing that the pleader is entitled to relief,' Fed.R.Civ.P. 8(a)(2), and that each averment be 'concise, and direct,' Fed.R.Civ.P. 8(e)(1)." Scibelli v. Lebanon County, 219 F.App'x 221, 222 (3d Cir. 2007). Thus, when a complaint is "illegible or incomprehensible", id., or when a complaint "is not only of an unwieldy length, but it is also largely unintelligible", Stephanatos v. Cohen, 236 F..App'x 785, 787 (3d Cir. 2007), an order dismissing a complaint under Rule 8 is clearly appropriate. See, e.g., Mincy v. Klem, 303 F.App'x

106 (3d Cir. 2008); Rhett v. New Jersey State Superior Court, 260 F.App'x 513 (3d Cir. 2008); Stephanatos v. Cohen, supra; Scibelli v. Lebanon County, supra; Bennett-Nelson v. La. Bd. of Regents, 431 F.3d 448, 450 n. 1 (5th Cir.2005).

In the first instance Rule 8 dismissals are often entered without prejudice to allowing the litigant the opportunity to amend and cure any defects. However, in a case such as this, where the Plaintiff was given numerous opportunities to amend his complaint after being placed on notice of the requirements of Rule 8, but has failed to file a pleading that contains a short and plain statement of a cause of action a different course of action is appropriate. In such instances, the failure to timely submit a proper complaint that complies with the strictures of Rule 8 warrants the dismissal of the complaint with prejudice. See, e.g., Mincy v. Klem, 303 F.App'x 106 (3d Cir. 2008); Rhett v. New Jersey State Superior Court, 260 F.App'x 513 (3d Cir. 2008); Stephanatos v. Cohen. supra; Scibelli v. Lebanon County, supra;

These principles are applicable here, and compel the dismissal of this third amended complaint with prejudice. Despite repeated advice, warnings and admonitions from the Court, Washington has proven himself incapable of drafting a complaint which complies with Rule 8 and contains a short and plain statement of a cause of action. Indeed, by any standard, Washington's third amended complaint–an 82 page tome, containing 368 factual averments involving acts allegedly spanning many years, occurring at prisons throughout Pennsylvania, and involving 159 named

Defendants–is not a "short and plain" statement of a cause of action containing averments that are "concise, and direct." Therefore, Rule 8 now compels dismissal of the complaint in its entirety with prejudice. See, e.g., Mincy v. Klem, 303 F.App'x 106 (3d Cir. 2008); Rhett v. New Jersey State Superior Court, 260 F.App'x 513 (3d Cir. 2008); Stephanatos v. Cohen, supra; Scibelli v. Lebanon County, supra.

D. Many of Washington's Claims Are Time-Barred

In addition to examining a complaint to ensure that it is a short and plain statement of a cause of action, when conducting a screening review of a *pro se* complaint under 28 U.S.C. § 1915, a court may consider whether the complaint is barred under the applicable statute of limitations. As the United States Court of Appeals for the Third Circuit recently explained when it affirmed the dismissal of a *pro se* complaint on statute of limitations grounds:

> Civil rights claims are subject to the statute of limitations for personal injury actions of the pertinent state. Thus, Pennsylvania's two year statutory period applies to [these] claims. See Lake v. Arnold, 232 F.3d 360, 368 (3d Cir.2000). The limitations period begins when the plaintiff knows or had reason to know of the injury forming the basis for the federal civil rights action. Gera v. Commonwealth of Pennsylvania, 256 Fed.Appx. 563, 564-65 (3d Cir.2007). Although we have not addressed the issue in a precedential decision, other courts have held that although the statute of limitations is an affirmative defense, district court may *sua sponte* dismiss a complaint under § 1915(e) where the defense is obvious from the complaint and no development of the factual record is required. See Fogle v. Pierson, 435 F.3d 1252, 1258 (10th Cir.2006); see also Eriline Co. S.A. v. Johnson, 440 F.3d 648, 656-57 (4th Cir.2006) (citation omitted)(finding that a district court's screening authority under § 1915(e) "differentiates in forma pauperis suits from ordinary civil suits

> and justifies an exception to the general rule that a statute of limitations defense should not be raised and considered sua sponte.")

Smith v. Delaware County Court, 260 F. App'x. 454, 455 (3d Cir. 2008). It is well-settled that civil rights claims brought under 42 U.S.C. § 1983 which are "subject to Pennsylvania's two-year statute of limitations for personal injury actions. See Kost v. Kozakiewicz, 1 F.3d 176, 189-90 (3d Cir.1993) (citing 42 Pa. Cons.Stat. Ann. § 5524); Napier v. Thirty or More Unidentified Fed. Agents, Employees or Officers, 855 F.2d 1080, 1087 n. 3 (3d Cir.1988)." Gordon v. Pugh, 235 F. App'x. 51, 53 (3d Cir. 2007); Wilson v. Garcia, 471 U.S. 261, 266-67 (1985). See Kach v. Hose, 589 F.3d. 626, 634 (3d Cir. 2009). A cause of action accrues when the plaintiff knows or has reason to know of the injury that constitutes the basis of the cause of action. Sameric Corp. of Delaware, Inc. v. City of Philadelphia, 142 F.3d 582, 599 (3d Cir. 1998); see also Nelson v. County of Allegheny, 60 F.3d 1010 (3d Cir. 1995).

While this two-year limitations period may be extended based upon a continuing wrong theory, a plaintiff must make an exacting showing to avail himself of this grounds for tolling the statute of limitations. For example, it is well settled that the "continuing conduct of [a] defendant will not stop the ticking of the limitations clock [once] plaintiff obtained requisite information [to state a cause of action]. On discovering an injury and its cause, a claimant must choose to sue or forego that remedy." Barnes v. American Tobacco Co., 161 F.3d 127, 154 (3d Cir. 1998) (quoting

Kichline v. Consolidated Rail Corp., 800 F. 2d 356, 360 (3d Cir. 1986)). See also Lake v. Arnold, 232 F.3d 360, 266-68 (3d Cir. 2000). Instead:

> The continuing violations doctrine is an "equitable exception to the timely filing requirement." West v. Philadelphia Elec. Co., 45 F.3d 744, 754 (3d Cir.1995). Thus, "when a defendant's conduct is part of a continuing practice, an action is timely so long as the last act evidencing the continuing practice falls within the limitations period; in such an instance, the court will grant relief for the earlier related acts that would otherwise be time barred." Brenner v. Local 514, United Bhd. of Carpenters and Joiners of Am., 927 F.2d 1283, 1295 (3d Cir.1991).In order to benefit from the doctrine, a plaintiff must establish that the defendant's conduct is "more than the occurrence of isolated or sporadic acts." West, 45 F.3d at 755 (quotation omitted). Regarding this inquiry, we have recognized that courts should consider at least three factors: (1) subject matter-whether the violations constitute the same type of discrimination, tending to connect them in a continuing violation; (2) frequency-whether the acts are recurring or more in the nature of isolated incidents; and (3) degree of permanence-whether the act had a degree of permanence which should trigger the plaintiff's awareness of and duty to assert his/her rights and whether the consequences of the act would continue even in the absence of a continuing intent to discriminate. See id. at 755 n. 9 (citing Berry v. Board of Supervisors of Louisiana State Univ., 715 F.2d 971, 981 (5th Cir.1983)). The consideration of "degree of permanence" is the most important of the factors. See Berry, 715 F.2d at 981.
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> Cowell v. Palmer Township. 263 F.3d 286, 292 (3d Cir. 2001)

In this case, because the Plaintiff knew of his claimed injuries at the time they were first allegedly inflicted–beginning a decade or more ago–the continuing wrong theory and discovery doctrines, which extend the limitations period in some cases, do not apply. See Barnes v. American Tobacco Co., 161 F.3d 127, 154 (3d Cir. 1998) ("We understand Fowkes[v. Pennsylvania R.R. Co., 264 F.2d 397 (3d Cir. 1959)] to

mean that continuing conduct of defendant will not stop the ticking of the limitations clock begun when plaintiff obtained requisite information. On discovering an injury and its cause, a claimant must choose to sue or forego that remedy.") (quoting Kichline v. Consolidated Rail Corp., 800 F. 2d 356, 360 (3d Cir. 1986)). See also Lake v. Arnold, 232 F.3d 360, 266-68 (3d Cir. 2000).

Washington's initial complaint was filed on July 7, 2008. A straightforward application of the two-year statute of limitations to this complaint then compels dismissal of all allegations this action which pre-date July 7, 2006, as untimely. This fundamental defect affects more than 100 paragraphs of the third amended complaint, (Doc. 47, ¶¶1-100, 154, 286, 288, 302, 306 and 307) and calls for the dismissal of all of these claims, causes of action, and defendants, with prejudice.

E. Venue Does Not Lie in this District Over Many of the Acts and Defendants Named in the Second Amended Complaint

Washington's third complaint is further flawed in one other, basic respect. Fifty-one of the Defendants named in the complaint, and literally dozens of the causes of action set forth in this pleading, involve alleged misconduct at SCI Greene and SCI Fayette, institutions which fall outside the Middle District of Pennsylvania. (Doc. 47, ¶¶96-125 and 131-151.) These acts are disparate in time and place, span many years, involve alleged Defendants who seem otherwise unrelated to one another, and are not linked together by the Plaintiff in any coherent and comprehensible fashion.

Given the widely differing factual background of these far-flung allegations, we conclude that these claims leveled against Defendants at SCI Green, and SCI Fayette are not properly joined with each other, or with the allegations arising against Defendants at SCI Huntingdon, SCI Dallas or other institutions. See Mincy v. Klem, 303 F.App'x 106 (3d Cir. 2008)(joinder of 77 prison official defendants in 215 page, 687 paragraph *pro se* prisoner complaint improper under Rule 20 of the Federal Rules of Civil Procedure). Since these 159 Defendants, employed at various prisons throughout Pennsylvania, do not appear to be properly joined with each other in this lawsuit, venue over the Defendants employed at SCI Greene and SCI Fayette may not lie in this district.

This case is a federal civil rights action. In such cases, where alleged violations of the United States Constitution at SCI Greene and SCI Fayette form the basis for the court's jurisdiction, 28 U.S.C. § 1391(b) defines the proper venue as to these specific allegations and provides that any action challenging actions at these two prisons should:

> be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.

28 U.S.C. § 1391(b).

In this case, "a substantial part of the events or omissions giving rise to the claim occurred" at SCI Greene and SCI Fayette, in the Western District of Pennsylvania. Moreover, with respect to these claims arising out of events at SCI Greene and SCI Fayette it appears that the 51 Defendants named in these allegations either reside in, or may be found in the venue of the United States District Court for the Western District of Pennsylvania. See 28 U.S.C. § 118(c). Therefore, it is evident from the Plaintiff's latest amended complaint that these matters at SCI Greene and SCI Fayette are not properly joined with the other allegations in the third amended complaint, and venue over these matters lies in the United States District Court for the Western District of Pennsylvania.

When it appears that a case has been brought in the wrong venue, there are two potential remedies available to the Court. Under 28 U.S.C. § 1406:

> The district court of a district in which is filed a case laying venue in the wrong . . . district shall dismiss, or if it be in the interest of justice, transfer such case to any district . . . in which it could have been brought.

28 U.S.C.. § 1406(a).

This Court is permitted *sua sponte* to raise the issue of an apparent lack of venue, provided the Court gives the Plaintiff notice of its concerns and an opportunity to be heard on the issue. See e.g., Stjernholm v. Peterson, 83 F.3d 347, 349 (10th Cir. 1996)(" [A] district court may raise on its own motion an issue of defective venue or lack of personal jurisdiction; but the court may not dismiss without first giving the

parties an opportunity to present their views on the issue.") In our prior rulings we have placed Washington on notice regarding these venue issues. Given this prior notice, Washington's failure to comply with that prior notice, and the other manifest flaws in these claims, it is recommended that these allegations arising at SCI Greene and SCI Fayette Washington ,which are not properly joined in this lawsuit, be dismissed pursuant to 28 U.S.C. § 1406(a).

Furthermore, entirely aside from these procedural flaws, many of Washington's claims fail on their merits because Washington has not stated a claim upon which relief can be granted. These flawed substantive claims are discussed separately below.

F. Washington's Eighth Amendment and Retaliation Claims Are Also Subject to Dismissal

1. Washington's Eighth Amendment Claims Fail

In our view, Washington's Eighth Amendment and retaliation claims are flawed and are subject to dismissal on their merits. For example, Washington faces an exacting burden in advancing Eighth Amendment claims against prison officials in their individual capacities. To sustain such a claim, the Plaintiff must plead facts which:

> [M]eet two requirements: (1) "the deprivation alleged must be, objectively, sufficiently serious;" and (2) the "prison official must have a sufficiently culpable state of mind." Farmer v. Brennan, 511 U.S. 825, 834, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994) (quotation marks and

> citations omitted). In prison conditions cases, "that state of mind is one of 'deliberate indifference' to inmate health or safety." Id. "Deliberate indifference" is a subjective standard under Farmer-the prison official-defendant must actually have known or been aware of the excessive risk to inmate safety.

Beers-Capitol v. Whetzel 256 F.3d 120, 125 (3d Cir. 2001).

By including a subjective intent component in this Eighth Amendment benchmark, the courts have held that a mere generalized knowledge that prisons are dangerous places does not give rise to an Eighth Amendment claim. See Jones v. Beard, 145 F. App'x 743 (3d Cir. 2005)(finding no Eighth Amendment violation where inmate-plaintiff complained about cellmate who had a history of psychological problems, but where plaintiff failed to articulate a specific threat of harm during the weeks prior to an attack.).

More fundamentally, such a claim of a constitutional deprivation cannot be premised merely on the fact that the named defendant was a prison official when the incidents set forth in the complaint occurred. Quite the contrary, to state a claim under §1983, the plaintiff must show that the defendant, acting under color of state law, deprived the plaintiff of a right secured by the Constitution or laws of the United States. 42 U.S.C. §1983; Morse v. Lower Merion School Dist., 132 F.3d 902 (3d Cir. 1997); see also Maine v.Thiboutot, 448 U.S. 1 (1980). Liability under § 1983 is personal in nature and can only follow personal involvement in the alleged wrongful conduct shown through specific allegations of personal direction or of actual

knowledge and acquiescence in the challenged practice. Robinson v. City of Pittsburgh, 120 F.3d 1286 (3d Cir. 1997).

In particular, it is well-established that:

> "A[n individual government] defendant in a civil rights action must have personal involvement in the alleged wrongdoing; liability cannot be predicated solely on the operation of respondeat superior. Personal involvement can be shown through allegations of personal direction or of actual knowledge and acquiescence." Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir.1988).

Evancho v. Fisher, 423 F.3d 347, 353 (3d Cir. 2005).

Furthermore, with respect to Eighth Amendment claims premised on inadequate medical treatment of Washington, in the medical context a constitutional violation under the Eighth Amendment occurs only when state officials are deliberately indifferent to an inmate's serious medical needs. Estelle v. Gamble, 429 U.S. 97, 105 (1976). To establish a violation of his constitutional right to adequate medical care in accordance with this standard, a plaintiff is required to point to evidence that demonstrates (1) a serious medical need, and (2) acts or omissions by prison officials that indicate deliberate indifference to that need. Rouse v. Plantier, 182 F.3d 192, 197 (3d Cir. 1999).

Deliberate indifference to a serious medical need involves the "unnecessary and wanton infliction of pain." Estelle, 429 U.S. at 104. Such indifference may be evidenced by an intentional refusal to provide care, delayed provision of medical

treatment for non-medical reasons, denial of prescribed medical treatment, denial of reasonable requests for treatment that results in suffering or risk of injury, Durmer v. O'Carroll, 991 F.2d 64, 68 (3d Cir. 1993), or "persistent conduct in the face of resultant pain and risk of permanent injury," White v. Napoleon, 897 F.2d 103, 109 (3d Cir. 1990).

However, it is also clear that the mere misdiagnosis of a condition or medical need, or negligent treatment provided for a condition, is not actionable as an Eighth Amendment claim because medical malpractice is not a constitutional violation. Estelle, 429 U.S. at 106. "Indeed, prison authorities are accorded considerable latitude in the diagnosis and treatment of prisoners." Durmer, 991 F.2d at 67 (citations omitted). Furthermore, in a prison medical context, deliberate indifference is generally not found when some significant level of medical care has been offered to the inmate. Clark v. Doe, 2000 U.S. Dist. LEXIS 14999, 2000 WL 1522855, at *2 (E.D.Pa. Oct. 13, 2000)("courts have consistently rejected Eighth Amendment claims where an inmate has received some level of medical care"). Thus, such complaints fail as constitutional claims under § 1983 since "the exercise by a doctor of his professional judgment is never deliberate indifference. See e.g. Brown v. Borough of Chambersburg, 903 F.2d 274, 278 (3d Cir.1990) ('[A]s long as a physician exercises professional judgment his behavior will not violate a prisoner's constitutional rights.')". Gindraw v. Dendler, 967 F.Supp. 833, 836 (E.D. Pa. 1997). Applying this

exacting standard, courts have frequently rejected Eighth Amendment claims that are based upon the level of professional care that an inmate received; see, e.g., Ham v. Greer, 269 F. App'x 149 (3d Cir. 2008); James v. Dep't of Corrections, 230 F. App'x 195 (3d. Cir. 2007); Gillespie v. Hogan, 182 F. App'x 103 (3d Cir. 2006); Bronson v. White, No. 05-2150, 2007 WL 3033865 (M.D. Pa. Oct. 15, 2007); Gindraw v. Dendler, 967 F.Supp. 833 (E.D. Pa. 1997), particularly where it can be shown that significant medical services were provided to the inmate but the prisoner is dissatisfied with the outcome of these services. Instead, courts have defined the precise burden which an inmate must sustain in order to advance an Eighth Amendment claim against a healthcare professional premised on allegedly inadequate care, stating that:

> The district court [may] properly dis[miss an] Eighth Amendment claim, as it concerned [a care giver], because [the] allegations merely amounted to a disagreement over the proper course of his treatment and thus failed to allege a reckless disregard with respect to his . . . care. The standard for cruel and unusual punishment under the Eighth Amendment, established by the Supreme Court in Estelle v. Gamble, 429 U.S. 97, 104 (1976), and its progeny, has two prongs: 1) deliberate indifference by prison officials and 2) serious medical needs. "It is well-settled that claims of negligence or medical malpractice, without some more culpable state of mind, do not constitute 'deliberate indifference.' " "Nor does mere disagreement as to the proper medical treatment support a claim of an eighth amendment violation." . . . . [The inmate] alleged no undue delay in receiving treatment and, as the district court noted, the evidence he presented established that he received timely care . . . . Although [an inmate plaintiff] may have preferred a different course of treatment, [t]his preference alone cannot establish deliberate indifference as such second-guessing is not the province of the courts.

James, 230 F.App'x. at 197-198(citations omitted).

In short, in the context of the Eighth Amendment, any attempt to second-guess the propriety or adequacy of a particular course of treatment is disavowed by courts since such determinations remain a question of sound professional judgment. Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754, 762 (3d Cir. 1979).

There is a necessary corollary to this principle, limiting the reach of the Eighth Amendment in a prison medical setting. It is also well-established that non-medical correctional staff may not be "considered deliberately indifferent simply because they failed to respond directly to the medical complaints of a prisoner who was already being treated by the prison doctor." Durmer v. O'Carroll, 991 F.2d 64, 69 (3d. Cir. 1993). The rationale for this rule has been aptly explained by the United States Court of Appeals for the Third Circuit in the following terms:

> If a prisoner is under the care of medical experts . . . , a non-medical prison official will generally be justified in believing that the prisoner is in capable hands. This follows naturally from the division of labor within a prison. Inmate health and safety is promoted by dividing responsibility for various aspects of inmate life among guards, administrators, physicians, and so on. Holding a non-medical prison official liable in a case where a prisoner was under a physician's care would strain this division of labor. Moreover, under such a regime, non-medical officials could even have a perverse incentive *not* to delegate treatment responsibility to the very physicians most likely to be able to help prisoners, for fear of vicarious liability. Accordingly, we conclude that, absent a reason to believe (or actual knowledge) that prison doctors or their assistants are mistreating (or not treating) a prisoner, a non-medical

> prison official . . . will not be chargeable with the Eighth Amendment scienter requirement of deliberate indifference

Spruill v. Gillis, 372 F.3d 218, 236 (3d. Cir. 2004).

Applying this standard, courts have repeatedly held that, absent some reason to believe that prison medical staff are mistreating prisoners, non-medical corrections staff who refer inmate medical complaints to physicians may not be held personally liable for medically-based Eighth Amendment claims. See, e.g., Johnson v. Doughty, 433 F.3d 1001 (7th Cir. 2006); Spruill v. Gillis, supra; Durmer v. O'Connor, supra; Garvey v. Martinez, No. 08-2217, 2010 WL 569852 (M.D. Pa. Feb. 11, 2010); Hodge v. United States. No. 06-1622, 2007 WL 2571938 (M.D. Pa. Aug. 31, 2007). This rule applies specifically to those prison staff whose involvement in a medical matter consists solely of examining, reviewing and addressing an inmate grievance concerning medical issues. Where non-medical corrections staff simply review a grievance, and refer an inmate to medical personnel, it is clear that "merely responding to or reviewing an inmate grievance does not rise to the level of personal involvement necessary to allege an Eighth Amendment deliberate indifference claim." Garvey v. Martinez, 2010 WL 569852, 7 (M.D.Pa. Feb. 11, 2010)(citations omitted); see Johnson v. Doughty, 433 F.3d 1001 (7th Cir. 2006).

In this case, without the inclusion of some further well-pleaded factual allegations, the assertions made by Washington appear to be little more than

"[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, [which as a legal matter] do not suffice." Ashcroft v. Iqbal, supra 127 S.Ct. At 1979. Moreover, Washington's third amended complaint actually recites hundreds of medical treatment appointments which the Plaintiff received over the years with dozens of health care professionals in prison. Thus it is apparent from the face of Washington's third amended complaint that various health care providers and mental health professionals have endeavored to address a host of physical and psychiatric complaints presented by Washington.

Indeed, in its current form the third amended complaint suffers from two flaws. First, with respect to supervisory, non-medical prison staff, Washington's allegations of personal involvement by supervisory staff in alleged wrongdoing is wholly deficient. Since the complaint does not adequately describe the personal involvement of prison supervisors in this conduct, and "personal involvement [must] be shown through allegations of personal direction or of actual knowledge and acquiescence," Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir.1988), these Eighth Amendment claims are subject to dismissal.[3]

[3]Indeed, we note in some instances Washington seems to premise supervisory liability largely on his claim that he secretly met with senior state corrections officials in April, 2010, while housed in a psychiatric holding cell in a state prison, and reported misconduct to them. (Doc. 47 , ¶¶ 358-362.) Even if we credit these assertions, they do not amount to personal direction or actual knowledge and acquiescence in forbidden practices by the supervisory defendants. Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir.1988).

Furthermore, with respect to prison medical personnel, there is a separate flaw in this third amended complaint. While he complains that medical staff have been deliberately indifferent to his medical needs, Washington's third amended complaint actually documents in detail extensive treatment which this inmate has received over the years for various physical, psychiatric, emotional and mental infirmities. Where such treatment is evident from the record, and where an inmate's dispute in essence entails nothing more than a disagreement between an inmate and doctors over alternate treatment plans, the inmate's complaint will fail as a constitutional claim under § 1983; see e.g., Gause v. Diguglielmo, 339 F.App'x 132 (3d Cir. 2009)(dispute over choice of medication does not rise to the level of an Eighth Amendment violation); Innis v. Wilson, 334 F.App'x 454 (3d Cir. 2009)(same); Rozzelle v. Rossi, 307 F.App'x 640 (3d Cir. 2008)(same); Whooten v. Bussanich, 248 F.App'x 324 (3d Cir. 2007)(same); Ascenzi v. Diaz, 247 F.App'x 390 (3d Cir. 2007)(same), since "the exercise by a doctor of his professional judgment is never deliberate indifference." Gindraw v. Dendler, 967 F.Supp. 833, 836 (E.D. Pa. 1997)(citations omitted).

Therefore, as currently drafted, the latest iteration of Washington's Eighth Amendment claims remains fatally flawed and should be dismissed.

2. Washington's Retaliation Claims Are Also Flawed

Finally, many of the Plaintiff's remaining claims revolve around the same theme: that certain of the Defendants, in various discrete ways, retaliated against him for exercising his rights to engage in protected activity such as pursuing legal claims and complaints. A prisoner alleging that prison officials have retaliated against him for exercising his rights under the First Amendment must prove that: (1) the conduct in which he engaged was constitutionally protected; (2) he suffered adverse action at the hands of prison officials; and (3) his constitutionally protected conduct was a substantial motivating factor in the defendants' conduct. Carter v. McGrady, 292 F.3d 152, 158 (3d Cir. 2002). With respect to the obligation to demonstrate that he suffered an adverse action, a plaintiff must demonstrate that he suffered action that "was sufficient to deter a person of ordinary firmness from exercising his rights." Allah v. Seiverling, 229 F.3d 220, 225 (3d Cir. 2000). Examples of adverse actions that have, in certain cases, been found to support a retaliation claim include filing false misconduct reports, Mitchell v. Horn, 318 F.3d 523, 530 (3d Cir. 2003), transferring a prisoner to another prison, Rauser v. Horn, 241 F.3d 330, 333-34 (3d Cir. 2001), and placing a prisoner in administrative custody, Allah, 229 F.3d at 225. The third factor requires that there be a causal link between the exercise of a constitutional right and the adverse action taken against the prisoner. Rauser, 241 F.3d at 333-34.

To establish this third, and crucial, component to a constitutional retaliation claim, causation, Washington must make an exacting showing. In this setting:

> To establish the requisite causal connection a plaintiff usually must prove either (1) an unusually suggestive temporal proximity between the protected activity and the allegedly retaliatory action, or (2) a pattern of antagonism coupled with timing to establish a causal link. See Krouse v. American Sterilizer Co., 126 F.3d 494, 503-04 (3d Cir.1997); Woodson v. Scott Paper Co., 109 F.3d 913, 920-21 (3d Cir.1997). In the absence of that proof the plaintiff must show that from the "evidence gleaned from the record as a whole" the trier of the fact should infer causation. Farrell v. Planters Lifesavers Co., 206 F.3d 271, 281 (3d Cir.2000).

Lauren W. ex rel. Jean W. v. DeFlaminis, 480 F.3d 259, 267 (3d Cir. 2007).

Moreover, when examining these causation issues, we are specifically admonished that:

> A court must be diligent in enforcing these causation requirements because otherwise a public actor cognizant of the possibility that litigation might be filed against him, particularly in his individual capacity, could be chilled from taking action that he deemed appropriate and, in fact, was appropriate. Consequently, a putative plaintiff by engaging in protected activity might be able to insulate himself from actions adverse to him that a public actor should take. The point we make is not theoretical as we do not doubt that public actors are well aware that persons disappointed with official decisions and actions frequently bring litigation against the actors responsible for the decisions or actions in their individual capacities, and the actors surely would want to avoid such unpleasant events. Thus, it would be natural for a public actor to attempt to head off a putative plaintiff with the unwarranted expenditure of public funds. Courts by their decisions should not encourage such activity and, by enforcing the requirement that a plaintiff show causation in a retaliation case, can avoid doing so as they will protect the public actor from unjustified litigation for his appropriate conduct. In this regard

> we recognize that often public actors such as those in this case must make a large number of decisions in charged atmospheres thereby inviting litigation against themselves in which plaintiffs ask the courts to second guess the actors' decisions.

Id. at 267-68.

If a plaintiff discharges his obligation to satisfy the foregoing three-part prima facie test, the burden shifts to the defendant to prove by a preponderance of the evidence that he or she would have made the same decision absent the protected conduct for reasons reasonably related to penological interest. Carter, 292 F.3d at 158. "This means that, once a prisoner demonstrates that his exercise of a constitutional right was a substantial or motivating factor in the challenged decision, the prison officials may still prevail by proving that they would have made the same decision absent the protected conduct for reasons reasonably related to a legitimate penological interest." Rauser, 241 F.3d at 334.

In this case, beyond a general assertion that countless disparate acts by hundreds of prison officials over the past decade constituted some form of retaliation, Washington alleges no facts in his third amended complaint which would permit a reasonable inference of retaliation. In the absence of such pleadings, and proof, these retaliation claims are also fundamentally flawed and should be dismissed.

We recognize that in civil rights cases *pro se* plaintiffs often should be afforded an opportunity to amend a complaint before the complaint is dismissed in its entirety,

See Fletcher-Hardee Corp. V. Pote Concrete Contractors, 482 F.3d 247, 253 (3d Cir. 2007), unless granting further leave to amend would be futile or result in undue delay. Alston v. Parker, 363 F.3d 229, 235 (3d Cir. 2004). Since Washington's latest *pro se* complaint still does not comply with these pleading rules, and does not contain sufficient factual recitals to state a claim upon which relief may be granted, these allegations should be dismissed under 28 U.S.C. § 1915A, and Rule 12(b)(6) of the Federal Rules of Civil Procedure.

Moreover, in this case, we have previously provided the Plaintiff with numerous opportunities to amend these pleadings, but to no avail. The current third amended complaint still fails to state a viable civil rights cause of action, and actually repeats assertions that were previously found to be legally insufficient. Since the Plaintiff has been afforded ample opportunity to correct the deficiencies identified in his prior complaints, has failed to state a viable civil rights cause of action, and the factual and legal grounds proffered in support of the complaint make it clear that he has no right to relief, granting further leave to amend would be futile or result in undue delay. Alston v. Parker, 363 F.3d 229, 235 (3d Cir. 2004). Therefore, it is recommended that the third amended complaint (Doc. 47) be dismissed without further leave to amend.

III. Recommendation

Accordingly, for the foregoing reasons, and consistent with the law of the case, IT IS RECOMMENDED that the Plaintiff's third amended complaint (Doc. 47) should be dismissed with prejudice. Specifically IT IS RECOMMENDED as follows;

1. All of the Plaintiff's complaints and causes of action which allege conduct pre-dating July 6, 2006, should be dismissed with prejudice.

2. The remaining allegations set forth in the complaint should be dismissed with prejudice because the complaint fails to comply with Rule 8(a) of the Federal Rules of Civil Procedure.

3. Since this Court lacks venue over complaints arising in SCI Greene, SCI Fayette or any other facility located outside the Middle District of Pennsylvania, and allegations relating to those facilities should be dismissed.

4. Further, since the Plaintiff's Eighth Amendment and retaliation claims remain flawed they, too, should be dismissed.

The parties are further placed on notice that pursuant to Local Rule 72.3:

> Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636 (b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk

of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

S/Martin C. Carlson
Martin C. Carlson
United States Magistrate Judge

Dated: November 9, 2010