

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

|                                     |   |                              |
|-------------------------------------|---|------------------------------|
| MARK WHALING,                       | ) |                              |
|                                     | ) |                              |
| Plaintiff,                          | ) | Case No. 1:08-cv-210-SJM-SPB |
| v.                                  | ) |                              |
|                                     | ) |                              |
| ERIE COUNTY PRISON, <i>et al.</i> , | ) |                              |
|                                     | ) |                              |
| Defendants.                         | ) |                              |

**ORDER**

Plaintiff's original civil rights complaint was received by the Clerk of Court on July 24, 2008 and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates. On March 27, 2009, Plaintiff filed his First Amended Complaint. Counsel was subsequently appointed to represent Plaintiff and, on March 22, 2011, Plaintiff filed a Second Amended Complaint [47]. On April 8, 2011, the Defendants filed a motion to dismiss Plaintiff's Second Amended Complaint [48] to the extent the complaint attempts to resurrect claims previously disposed of by this Court or otherwise appears to contradict the Amended Memorandum Judgment Order previously entered by this Court on February 4, 2010 [34].

The Magistrate Judge's Report and Recommendation, filed on May 27, 2011 [53], recommends that the Defendants' [Partial] Motion to Dismiss Plaintiff's Second Amended Complaint [48] be granted. Plaintiff was allowed fourteen (14) days from the date of service in which to file objections. Service was made electronically on counsel for all parties. To date, no objections to the Report and Recommendation have been

filed. After de novo review of the complaint and documents in the case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 14<sup>th</sup> Day of June, 2011;

IT IS ORDERED that the Defendants' [Partial] Motion to Dismiss Plaintiff's Second Amended Complaint [48] be, and hereby is, GRANTED.

The Report and Recommendation of Magistrate Judge Baxter, filed on May 27, 2011 [53], is adopted as the opinion of this Court.

s/ Sean J. McLaughlin

SEAN J. McLAUGHLIN  
United States District Judge

cm: All counsel of record

U.S. Magistrate Judge Susan Paradise Baxter