

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

THOMAS BEALE,)	
)	
Plaintiff,)	1:13-cv-00015-TFM-SPB (ERIE)
)	
v.)	District Judge Terrence F. McVerry
)	Magistrate Judge Susan Paradise Baxter
John E. Wetzel, et al.)	
)	
Defendants.)	

MEMORANDUM ORDER

This prisoner civil rights action was referred to United States Magistrate Judge Susan Paradise Baxter for a Report and Recommendation (“R&R”) in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Local Rules 72.1.3 and 72.1.4.

Now pending is the motion to dismiss filed by John Wetzel, the Secretary of Corrections for the Pennsylvania Department of Corrections (“DOC”); Jeffrey Witherite, Staff Assistant of the Western Region of the Pennsylvania DOC; Michael W. Harlow, Superintendent; Richard M. Hall, Deputy Superintendent; Ronald Bryant, Deputy Superintendent; William J. Woods, Corrections Classification Program Manager; Robert Gilmore, Corrections Officer (“CO”); Randy Irwin, CO; Szelewski, CO; Lewis Johnson, CO; Hendricks, CO; Bryan Flinchbaugh, Unit Manager; Michelle Wagner, Unit Manager; Laura Giles, Inmate Employment Supervisor; J. Beddick, CO; H.W. Hodge, CO; W. Christopher, CO; J.S. Ceremuga, CO; R.S. Pangborn, CO; E.F. Lindey, CO; W.M. Maloney, CO; Mark Cimperman, CO; S.K. Hong, CO; G.L. Ferraro, CO; S.L. McDonald, CO; J.K. Knight, CO; F.L. Jones, CO; B. Sullivan, CO; T. Lindsey, CO; M. Rodriguez, CO; A. Pierce, CO; S. Williamson, CO; M.A. McLaurin, CO; Silloway, CO; Brian Murry, Maintenance Manager; Don Lindsey, Central Plant Supervisor; Dean Campbell, H-VAC Supervisor; Dan Henry, Mailroom Supervisor; Pauline Blood, Commissary Manager; Maxine

Overton, Health Care Administrator; Brenda Weaver, Librarian; Douglas Petroff, Librarian; and Stephen Smith, Safety Manager (collectively, the “Corrections Defendants”). (This Court fully agrees with the persuasive and well-reasoned analysis of Magistrate Judge Eddy.). On February 12, 2015, Magistrate Judge Baxter issued an R&R, which recommended that the motion to dismiss be **GRANTED IN PART** and **DENIED IN PART**. Specifically, she recommended the dismissal of (1) all claims against all Defendants in their official capacities on the basis of Eleventh Amendment immunity; and (2) all claims against Defendants Bryant, Blood, Christopher, Irwin, Knight, Lindey, McDonald, McLaurin, Pangborn, Rodriguez, Woods, Campbell, Giles, Hendricks, D. Lindsey, Silloway, Szelewski, Weaver, Ceremuga, Cimperman, Hong, Henry, Petroff, Smith, Lewis, Wetzel, Witherite, Hall, Gilmore, Johnson, Flinchbaugh, Beddick, Murry and Overton in light of Plaintiff’s failure to allege that they were personally involved in any misconduct. She further recommended that Plaintiff’s allegations of inadequate medical treatment and failure to supervise failed to state a claim upon which relief could be granted and thus should also be dismissed. On the other hand, however, Magistrate Judge Baxter recommended that the Corrections Defendants’ motion to dismiss be denied as to Plaintiff’s Eighth Amendment claim based on exposure to ETS with respect to Defendants Harlow, Hodge, Jones, Ferraro, Maloney, and Wagner. Likewise, she recommended that the Corrections Defendants’ motion to dismiss be denied as to Plaintiff’s First Amendment retaliation claim with respect to Defendants Sullivan, T. Lindsey, Williamson, Pierce, and Wagner.¹

1. In addition to the Corrections Defendants, Plaintiff also named two non-DOC personnel as Defendants: Daniel Telega, Physician Assistant, and Julianna Lewis, Registered Nurse. Although these Defendants did not join in the Corrections Defendants’ motion to dismiss, Magistrate Judge Baxter dismissed them as Defendants because (1) they were not served, and (2) there are no allegations in the Amended Complaint leveled against these Defendants. The Court agrees that dismissal was proper.

Plaintiff timely filed objections to the certain portions of the R&R. (ECF No. 81). The Corrections Defendants' have not responded to Plaintiff's objections.

After *de novo* review of the pleadings and documents in the case, together with the thorough and well-reasoned R&R of Magistrate Judge Baxter, the following Order is entered:

AND NOW, this 21st day of May, 2015:

IT IS HEREBY ORDERED that the R&R is **ADOPTED** as the Opinion of the Court, and the Corrections Defendants' motion to dismiss (ECF No. 67) is **GRANTED IN PART** and **DENIED IN PART**. Accordingly, all claims against all Defendants in their official capacities; all claims against Defendants Bryant, Blood, Christopher, Irwin, Knight, Lindey, McDonald, McLaurin, Pangborn, Rodriguez, Woods, Campbell, Giles, Hendricks, D. Lindsey, Silloway, Szelewski, Weaver, Ceremuga, Cimperman, Hong, Henry, Petroff, Smith, Lewis, Wetzel, Witherite, Hall, Gilmore, Johnson, Flinchbaugh, Beddick, Murry, Overton; all claims based on inadequate medical treatment and failure to supervise; and all claims against Defendants Telega and Lewis are **DISMISSED** for the reasons set forth in the R&R. The Clerk of Court is directed to terminate the following Defendants from the docket: Bryant, Blood, Christopher, Irwin, Knight, Lindey, McDonald, McLaurin, Pangborn, Rodriguez, Woods, Campbell, Giles, Hendricks, D. Lindsey, Silloway, Szelewski, Weaver, Ceremuga, Cimperman, Hong, Henry, Petroff, Smith, Lewis, Wetzel, Witherite, Hall, Gilmore, Johnson, Flinchbaugh, Beddick, Murry, Telega and Overton.

IT IS FURTHER ORDERED that the caption in this matter is hereby **AMENDED** as follows:

THOMAS BEALE,)
)
 Plaintiff,)
)
 v.)
)
 MICHAEL HARLOW, H.W.)
 HODGE, F.L. JONES, G.L.)
 FERRARO, W.M. MALONEY,)
 MICHELLE WAGNER, B.)
 SULLIVAN, T. LINDSEY, S.)
 WILLIAMSON, and A. PIERCE,)
)
 Defendants.)

1:13-cv-00015-TFM-SPB (ERIE)

By the Court:

s/ Terrence F. McVerry
Senior United States District Judge

cc: Thomas Beale, *pro se*
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