

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

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| DONALD K. CUNNINGHAM, |) | |
| Plaintiff, |) | |
| |) | Civil Action No. 1:16-127 |
| v. |) | District Judge Nora Barry Fischer |
| |) | Magistrate Judge Susan Paradise Baxter |
| LISA ZUBSIC, <u>et al.</u> , |) | |
| Defendants. |) | |

MEMORANDUM ORDER

This prisoner civil rights action filed by state inmate Donald K. Cunningham against Defendants Lisa Zubsic, Heather McKeel, NP-C, Jamie Ferdarko, RNS and Barry Eisenberg was referred to United States Magistrate Judge Susan Paradise Baxter for a report and recommendation in accordance with 28 U.S.C. § 636(b)(1) and Rule 72 of the Local Rules for Magistrate Judges. Service has not yet been made on Defendants Zubsic, McKeel or Eisenberg. Plaintiff's Complaint was received by Jamie Ferdarko, he waived service and counsel entered an appearance on his behalf. (Docket No. 18). Ferdarko filed a Motion to Dismiss the claim asserted against him, (Docket Nos. 19, 20), and Plaintiff responded with a "Motion for Case to be Continued," (Docket No. 27), which is properly construed as a brief in opposition to the motion. On July 28, 2017, Magistrate Judge Baxter issued a Report and Recommendation ("R&R") (Docket No. 35), in which she recommended that Ferdarko's Motion to Dismiss be granted and that Plaintiff's claim against him be dismissed, with prejudice, as Plaintiff failed to state a claim that Ferdarko violated his Eighth Amendment rights by showing deliberate indifference to his serious medical needs. On August 14, 2017, Plaintiff filed Objections to the

R&R, to which he attaches the grievance he submitted concerning his medical condition on January 25, 2016 and Ferdarko's response denying the grievance on February 8, 2016. (Docket No. 36).

Where, as here, objections have been filed, the Court is required to make a *de novo* determination as to those portions of the R&R to which objections were made. See 28 U.S.C. § 636(b)(1). Accordingly, this Court has carefully examined *de novo* all claims raised by Plaintiff in his Objections, including his grievance and Ferdarko's response thereto and agrees with the Magistrate Judge that Ferdarko's motion to dismiss should be granted and that the claim against him should be dismissed, with prejudice. To this end, the Court concurs with the Magistrate Judge's analysis that Plaintiff failed to state a viable § 1983 claim asserting Eighth Amendment violations against Ferdarko, and otherwise adds that Plaintiff has not alleged that Ferdarko had any personal involvement with the events he claims took place in his Complaint, aside from denying the grievance on February 8, 2016. *See Valdez v. Danberg*, 576 F. App'x. 97, 100 (3d Cir. 2014) ("It is well—established that an individual government defendant in an action under § 1983 must have had some personal involvement in the alleged wrongdoing to be held liable.") (citing *Evancho v. Fisher*, 423 F.3d 347, 353 (3d Cir. 2005)).

For these reasons,

IT IS HEREBY ORDERED that Plaintiff's Objections [36] are OVERRULED;

IT IS FURTHER ORDERED that the Court adopts the R&R [35] as the Opinion of this Court;

IT IS FURTHER ORDERED that Ferdarko's Motion to Dismiss [19] is GRANTED and the claim asserted against him is DISMISSED, with prejudice; and,

FINALLY, IT IS ORDERED that Plaintiff's "Motion for Case to be Continued," (Docket No. 27), is DENIED, as moot.

s/Nora Barry Fischer

Nora Barry Fischer
United States District Court Judge

cc/ecf: All counsel of record.

Magistrate Judge Susan P. Baxter

DONALD K. CUNNINGHAM, JR.
GM-9278
SCI FOREST
PO BOX 945
MARIENVILLE, PA 16239
(via first class mail)