

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

GABRIEL ROSA-DIAZ,	)	
Plaintiff,	)	
	)	C.A. No. 16-155 Erie
v.	)	
	)	
M. OVEMYER, et al,	)	
Defendants.	)	

**MEMORANDUM ORDER**

This prisoner civil rights action was received by the Clerk of Court on June 21, 2016, 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. The magistrate judge's report and recommendation, filed on August 14, 2018, recommended that the motion to dismiss [ECF No. 59] should be granted in part and denied in part, as follows: Granted as to Overmyer, Mongelluzzo, and Varner based on Plaintiff's failure to sufficiently allege their personal involvement in any constitutional violation. The Clerk should be directed to terminate these three Defendants from the docket; Denied as to the access to courts claim; and Granted as to the due process claim based on the loss of and damage to Plaintiff's personal property. Service was made on Plaintiff by mail at SCI Smithfield, where he is incarcerated, and on Defendants. Objections were filed by the Plaintiff on August 29, 2018. After de novo review of the petition and documents in the case, together with the report and recommendation and objections thereto, the

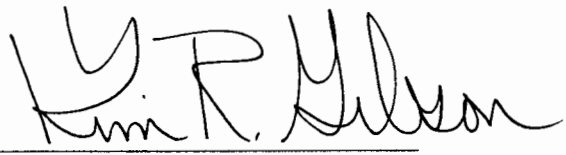
following order is entered:

AND NOW, this 11<sup>th</sup> Day of September, 2018;

IT IS HEREBY ORDERED that the motion to dismiss [ECF No. 59] is GRANTED in part and DENIED in part, as follows: Granted as to Overmyer, Mongelluzzo, and Varner based on Plaintiff's failure to sufficiently allege their personal involvement in any constitutional violation. The Clerk is directed to terminate these three Defendants from the docket; Denied as to the access to courts claim; and Granted as to the due process claim based on the loss of and damage to Plaintiff's personal property.

The report and recommendation of Magistrate Judge Baxter, dated August 14, 2018, is adopted as the opinion of the court.

September 11, 2018

  
KIM R. GIBSON  
United States District Judge

cc: Susan Paradise Baxter  
U.S. Magistrate Judge

all parties of record \_\_\_\_\_