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

MR. SOLOMON JOHNSON,	
	Civil Action No. 13 – 531
Plaintiff,)
) Chief District Judge Joy Flowers Conti
V.) Chief Magistrate Judge Lisa Pupo Lenihan
)
JOSEPH MAZURKIEWICZ, et al.,)
)
Defendants.)
)

MEMORANDUM ORDER

AND NOW, this 20th day of August, 2014, after plaintiff Mr. Solomon Johnson ("Plaintiff") initiated the above-captioned case; and after defendants Beers, Gettins and Mazurkiewicz filed a motion to dismiss Plaintiff's amended complaint; and after a Report and Recommendation was issued by the magistrate judge recommending that said motion to dismiss be granted in part and denied without prejudice in part, and further recommending that defendant Yothers be dismissed from this action *sua sponte* and that Plaintiff be allowed to amend his amended complaint with respect to several claims; and after the parties were served with the Report and Recommendation and no objections were filed by the August 8, 2014 deadline; and upon consideration of the Report and Recommendation and an independent review of the record,

IT IS HEREBY ORDERED that the Report and Recommendation (ECF No. 37) is **ADOPTED** as the opinion of this court.

IT IS FURTHER ORDERED that, for the reasons set forth in the Report and Recommendation, the motion to dismiss filed by defendants Beers, Gettins and Mazurkiewicz

(ECF No. 34) is granted in that Plaintiff's claims predating April 9, 2011 are dismissed with

prejudice because they are barred by the statute of limitations and also granted as to Plaintiff's

claims against the defendants in their official capacities. The motion is denied without prejudice

to the extent that defendants seek dismissal of Plaintiff's amended complaint for failure to

exhaust his administrative remedies pursuant to the Prison Litigation Reform Act.

IT IS FURTHER ORDERED that, pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), defendant

Yothers is dismissed from this action because Plaintiff failed to state a claim against her upon

which relief may be granted.

IT IS FURTHER ORDERED that Plaintiff's due process claim based on his initial

placement in administrative custody is dismissed with prejudice for failure to state a claim

pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

IT IS FURTHER ORDERED that Plaintiff amend his complaint with respect to the

following claims: (1) the mail tampering retaliation claim against defendants Gettins, Beers and

Kramer; (2) the due process claim against defendant Bascarino, only for the duration of the time

Plaintiff spent in administrative custody; and (3) the deliberate indifference claim against

defendant Mazurkiewicz.

IT IS FURTHER ORDERED that this case will be dismissed with prejudice for failure

to prosecute if Plaintiff fails to file his second amended complaint within thirty (30) days of the

date of this order.

By the Court:

/s/ Joy Flowers Conti

Joy Flowers Conti

Chief United States District Judge

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cc: Solomon Johnson GX7163 SCI Benner 301 Institution Drive Bellefonte, PA 16823 (Via First Class Mail)

Counsel of Record (Via CM/ECF Electronic Mail)