

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

KENNETH ARNOLD,)	
)	
Plaintiff,)	Civil Action No. 2: 16-cv-1299
)	
v.)	United States District Judge
)	Nora Barry Fischer
)	
SUPERINTENDENT R. GILMORE, et)	
al.,)	
Defendants.)	

MEMORANDUM ORDER

Plaintiff, Kenneth Arnold, commenced this case on August 26, 2016, with the filing of a motion for leave to proceed *in forma pauperis* with attached Civil Rights Complaint. ([ECF No. 1](#).) The case was referred to United States Magistrate Judge Cynthia Reed Eddy for pretrial proceedings in accordance with the Magistrate Judges Act, [28 U.S.C. § 636\(b\)\(1\)](#), and the Local Rules of Court for Magistrate Judges. On December 27, 2016, Defendants filed a motion to dismiss. ([ECF No. 25](#).) In response, Plaintiff filed an Amended Complaint on January 20, 2017. ([ECF No. 29](#).)

On February 7, 2017, Defendants filed a motion to dismiss the Amended Complaint ([ECF No. 32](#)). Plaintiff responded in opposition to the motion. ([ECF No. 38](#), [ECF No. 39](#)).

On June 23, 2017 Magistrate Judge Eddy filed a Report and Recommendation ([ECF No. 44](#)) recommending that the motion be granted as to Plaintiff's due process claims, but denied as to Plaintiff's failure to protect claims. The parties were served with the Report and Recommendation at their listed addresses of record and advised that any written objections by Plaintiff were due by July 13, 2017, and any written objections by Defendants were due by July

10, 2017. To date, no party has filed any objections and no party has sought an extension of time in which to do so.

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

AND NOW, this 24th day of July, 2017:

1. The Motion to Dismiss Plaintiff's Amended Complaint filed by Defendants ([ECF No. 32](#)) is **GRANTED IN PART** and **DENIED IN PART** as follows: The motion is **GRANTED** as to Plaintiff's due process claims which are hereby dismissed with prejudice. Defendants CO 1 M.R. Johnson, Hearing Examiner L.S. Kerns Barr, and Tracy Shawley, Grievance Coordinator, are dismissed with prejudice.

The motion is **DENIED** as to Plaintiff's failure to protect claims. This claim proceeds against Superintendent R. Gilmore, Lt. E. Grego, and CO 1 Gray.

3. **IT IS FURTHER ORDERED** that the Report and Recommendation ([ECF No. 44](#)) dated June 23, 2017, is **ADOPTED** as the Opinion of the Court.

4. Defendants shall file their Answers in accordance with [Federal Rule of Civil Procedure 12\(a\)\(4\)\(A\)](#).

5. The matter is referred back to Magistrate Judge Eddy for all future pretrial matters.

BY THE COURT:

s/Nora Barry Fischer
Nora Barry Fischer
United States District Judge

cc: KENNETH ARNOLD
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John P. Senich, Jr.
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