

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

EDWARD MAY,)	
)	
Plaintiff,)	Civil Action No. 3: 13-cv-00069
)	
v.)	United States District Judge
)	Kim R. Gibson
MICHAEL CASH, D.O., et al.,)	
)	United States Magistrate Judge
Defendants.)	Cynthia Reed Eddy

MEMORANDUM ORDER

The above captioned case was initiated by the filing of a motion to proceed *in forma pauperis* (ECF No. 1) on March 20, 2013 and was referred to a United States magistrate judge for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and the local rules of court. Plaintiff was granted leave to proceed in forma pauperis and the complaint was filed. On July 2, 2013, Plaintiff filed an Amended Complaint, which remains the operative complaint (ECF No. 16).

On April 21, 2014, the Magistrate Judge filed a Report and Recommendation (ECF No. 71) recommending that the Motion to Dismiss or, in the alternative, Motion for Summary Judgment filed by Defendants Michael Cash, D.O., Steven Burk, P.A., Jason Kopera, R.N., Normal Weidlich, Jeannette Nagy, pharmacists, and Anthony Pazcoquin be granted and that the case be dismissed with prejudice. After being granted an extension of time in which to file objections to the Report and Recommendation, Plaintiff filed Objections on June 3, 2014 (ECF No. 74). Plaintiff's Objections do not undermine the recommendation of the Magistrate Judge.

As the Report and Recommendation aptly notes, the November 2, 2012, response letter received from the Bureau of Prisons' regional counsel clearly pertained to Plaintiff's

administrative claim no. TRT-NER-2012-05256, in which Plaintiff, under the Federal Tort Claims Act, was alleging negligence against the FCI Loretto medical staff. Plaintiff's claims in the instant lawsuit are not based on negligence, but rather are based on alleged violations of Plaintiff's rights under the First, Fourth, Sixth, and Eighth Amendments to the U.S. Constitution pursuant to *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971). See Amended Complaint, at ¶ 1 (ECF No. 16).

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

AND NOW, this 27th day of June, 2014;

IT IS HEREBY ORDERED that the Motion to Dismiss or, in the alternative, Motion for Summary Judgment filed by Defendants Michael Cash, D.O., Steven Burk, P.A., Jason Kopera, R.N., Normal Weidlich, Jeannette Nagy, pharmacists, and Anthony Pazcoquin (collectively referred to as the "Federal Defendants") be granted with prejudice.

IT IS FURTHER ORDERED that the Report and Recommendation (ECF. No. 71) dated April 21, 2014, is **ADOPTED** as the Opinion of the Court.

IT IS FURTHER ORDERED that the Clerk of Court mark this case **CLOSED**.

AND IT IS FURTHER ORDERED that pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, Plaintiff has thirty (30) days to file a notice of appeal as provided by Rule 3 of the Federal Rules of Appellate Procedure.

By the Court:



Kim R. Gibson
United States District Judge

cc: EDWARD MAY
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