

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

AARON SLOAN,	)	
Plaintiff,	)	
v.	)	C.A. No. 13-104 Johnstown
	)	
DAVID PITKINS, et al,	)	
Defendants.	)	

**MEMORANDUM ORDER**

This prisoner civil rights action was received by the Clerk of Court on May 16, 2013, 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 25, 2014, recommended that Defendants' partial motion to dismiss [ECF No. 22] be granted in part and denied in part, as follows:

1. The motion to dismiss Plaintiff's Fourteenth Amendment due process claim against Defendant Dupont be GRANTED and Defendant Dupont be terminated from this case accordingly;
2. The motion to dismiss Plaintiff's supervisory liability claim against Defendants Pitkins , Rozum, and Sroka, insofar as it relates to their failure to respond to and/or investigate Plaintiff's grievances, be GRANTED and Defendant Sroka be terminated from this case accordingly;
3. The motion to dismiss Plaintiff's failure to protect claim against Defendants Pitkins and Rozum be DENIED and said claim should be allowed to proceed beyond the pleading stage; and
4. The motion to dismiss Plaintiff's conspiracy claim and his state tort claims be GRANTED.

It was further recommended that, pursuant to the authority granted by the Prison Litigation Reform Act, Plaintiff's claims against Defendants John Doe and Jane Doe be dismissed, and said Defendants be terminated from this case.

Because Defendants' motion was treated as a motion to dismiss under Rule 12 of the Federal Rules of Civil Procedure, Plaintiff's motion for Fed.R.Civ.P. 56(d) relief [ECF No. 25] should also be denied as moot. Service was made on Plaintiff by mail at SCI Somerset, where he is incarcerated, and on Defendants. Objections were filed by the Plaintiff on September 10, 2014. 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 30<sup>th</sup> Day of September, 2014;

IT IS HEREBY ORDERED that Defendants' partial motion to dismiss [ECF No. 22] is GRANTED in part and DENIED in part, as follows:

1. The motion to dismiss Plaintiff's Fourteenth Amendment due process claim against Defendant Dupont is GRANTED and Defendant Dupont is terminated from this case;
2. The motion to dismiss Plaintiff's supervisory liability claim against Defendants Pitkins, Rozum, and Sroka, insofar as it relates to their failure to respond to and/or investigate Plaintiff's grievances, is GRANTED and Defendant Sroka is terminated from this case;
3. The motion to dismiss Plaintiff's failure to protect claim against Defendants Pitkins and Rozum is DENIED and said claim will be allowed to proceed beyond the pleading stage; and
4. The motion to dismiss Plaintiff's conspiracy claim and his state tort claims is GRANTED.


It is further ORDERED that, pursuant to the authority granted by the Prison Litigation Reform Act, Plaintiff's claims against Defendants John Doe and Jane Doe are

dismissed, and said Defendants are terminated from this case.

Because Defendants' motion was treated as a motion to dismiss under Rule 12 of the Federal Rules of Civil Procedure, Plaintiff's motion for Fed.R.Civ.P. 56(d) relief [ECF No. 25] is DENIED as moot.

The report and recommendation of Magistrate Judge Baxter, dated August 25, 2014, is adopted as the opinion of the court.

September 30, 2014

  
KIM R. GIBSON  
United States District Judge

cc: Susan Paradise Baxter  
U.S. Magistrate Judge

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