

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA

MICHAEL ANTHONY JONES,

Plaintiff,

v.

Civil Action No. 1:15cv50
(Judge Keeley)

UNITED STATES, et al.,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION, GRANTING DEFENDANTS'
MOTION TO DISMISS, DENYING PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT, AND DENYING AS MOOT PLAINTIFF'S MOTIONS TO COMPEL

On March 20, 2015, the pro se plaintiff, Michael Anthony Jones ("Jones"), filed a civil rights complaint against a number of defendants concerning his medical care at U.S.P. Hazelton (dkt. no. 1-1). Jones's brought his initial complaint against the defendants in their individual capacities pursuant to Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971) (dkt. no. 11). On October 1, 2015, he filed an additional complaint in this same case asserting a claim under the Federal Tort Claims Act ("FTCA") against the United States of America (dkt. no. 62).

The Court referred this matter to United States Magistrate Judge Robert W. Trumble for initial screening and a Report and Recommendation ("R&R") in accord with LR PL P 2.¹ On November 17,

¹Jones subsequently filed three separate motions for a preliminary injunction (dkt. nos. 3, 21, and 24). On October 20, 2015, Magistrate Judge Trumble entered a Report and Recommendation specifically addressing these motions, which recommended that Jones's first motion be denied and the latter two motions be dismissed as moot. The Court adopted the Report and Recommendation on March 31, 2016 (dkt. no. 93).

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2016, Magistrate Judge Trumble issued his R&R, in which he concluded that Jones had failed to state a valid Bivens claim and also had failed to file a screening certificate of merit pursuant to West Virginia Code § 55-7B-6(c), a necessary requirement of his FTCA claim (dkt. no. 138). The R&R recommended that the Court deny Jones's motion for summary judgment (dkt. no. 114), grant the defendants' motion to dismiss (dkt. no. 92), dismiss Jones's Bivens claim with prejudice, dismiss his FTCA claim without prejudice, and dismiss as moot his motion to compel (dkt. no. 132). Id. at 20-21.

The R&R also specifically warned Jones that his failure to object to the recommendation would result in the waiver of any appellate rights he might otherwise have on this issue. Id. at 21. On December 5, 2016, Jones moved for an extension of time to file any objections to the R&R (dkt. no. 140), which the Court granted in part, giving Jones twenty-eight days to object, double the statutorily required time (dkt. no. 142). Rather than utilizing that time to write any objections, Jones continued to write motions for additional extensions of time (dkt. nos. 144 and 147), which the Court denied (dkt. nos. 145 and 148), as well as duplicative motion to compel (dkt. no. 141). Despite multiple clear warnings to Jones that no further extensions would be granted and that no late

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filings would be considered, he failed to file any objections.²

After reviewing Magistrate Judge Trumble's thorough and detailed R&R, together with the record, the Court, finding no clear error, agrees with the reasoning and conclusions contained therein. Accordingly, the Court:

- **ADOPTS** the R&R in its entirety (dkt. no. 138);
- **DENIES** Jones's motion for summary judgment (dkt. no. 114);
- **GRANTS** the defendants' motion to dismiss (dkt. no. 92);
- **ORDERS** that Jones's Bivens claim be **DISMISSED WITH PREJUDICE**;
- **ORDERS** that Jones's FTCA claim be **DISMISSED WITHOUT PREJUDICE**;
- **DENIES as MOOT** Jones's motions to compel (dkt. nos. 132 and 141); and
- **ORDERS** that this case be stricken from the Court's active docket.

It is so **ORDERED**.

Pursuant to Fed. R. Civ. P. 58, the Court directs the Clerk of Court to enter a separate judgment order and to transmit copies of

² The failure to object to the Report and Recommendation not only waives the appellate rights in this matter, but also relieves the Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. Arn, 474 U.S. 140, 148-53 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).

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this order to counsel of record and to the pro se plaintiff,
certified mail, return receipt requested.

Dated: December 20, 2016.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE