UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

ARMONI MASUD JOHNSON, Plaintiff, v. SUPERINTENDENT MCGINLEY, et al., Defendants.	CIVIL ACTION NO. 4:18-CV-01714 (BRANN, J.) (MEHALCHICK, M.J.)

REPORT AND RECOMMENDATION

This is a civil rights action initiated upon the filing of the Complaint by *pro se* Plaintiff Armoni Masud Johnson ("Johnson") on August 29, 2018. (Doc. 1). In his Amended Complaint filed on April 8, 2020, Johnson asserts claims under 42 U.S.C. § 1983 for deprivation of legal mail and access to the courts, and conspiracy and retaliation. (Doc. 34; Doc. 50). Now pending before the Court is a Motion to Dismiss the Amended Complaint filed by all Defendants. (Doc. 53). For the reasons stated herein, it is recommended that the Motion to Dismiss be **GRANTED IN PART** and **DENIED IN PART.**

I. BACKGROUND AND PROCEDURAL HISTORY

Johnson filed the original Complaint in this matter on August 29, 2018, in which he named three Defendants. (Doc. 1). On March 15, 2019, the Court found that the Complaint and supplemental documents failed to state claims upon which relief may be granted, and Johnson was granted leave to amend the Complaint. (Doc. 28; Doc. 29).

On March 30, 2020, Johnson was granted an extension to file his amended complaint, and the operative Amended Complaint was filed on April 8, 2020. (Doc. 32; Doc. 34). Upon

Defendants' Motion for a More Definite Statement, the Court determined that Johnson's Amended Complaint was worthy of an answer as to claims that he was deprived of legal mail and access to the courts, as well as claims of retaliation and conspiracy. (Doc. 50). Defendants subsequently filed the instant Motion to Dismiss on November 6, 2020. (Doc. 53). This Motion is fully briefed and is ripe for disposition. (Doc. 58; Doc. 60).[1]

II. MOTION TO DISMISS STANDARD

Defendants seek to dismiss the Complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure. (Doc. 58). Rule 12(b)(6) authorizes a defendant to move to dismiss for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). To assess the sufficiency of a complaint on a Rule 12(b)(6) motion, a court must first take note of the elements a plaintiff must plead to state a claim, then identify mere conclusions which are not entitled to the assumption of truth, and finally determine whether the complaint's factual allegations, taken as true, could plausibly satisfy the elements of the legal claim. *Burtch v. Milberg Factors, Inc.*, 662 F.3d 212, 221 (3d Cir. 2011). In deciding a Rule 12(b)(6) motion, the court may consider the facts alleged on the face of the complaint, as well as "documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007).

After recognizing the required elements which make up the legal claim, a court should "begin by identifying pleadings that, because they are no more than conclusions, are not

[1] Plaintiff was granted an extension of time to file a brief in opposition to the motion to dismiss. (Doc. 67). He has not filed any brief in opposition. On July 9, 2021, he filed an "Omnibus Motion" (Doc. 72) in which he seeks another extension of time in all of his cases, along with appointment of counsel. For the reasons set forth in the undersigned's Order filed concurrently with this Report and Recommendation, that motion is denied in this case. As such, the instant motion is ripe.

entitled to the assumption of truth." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). The plaintiff must provide some factual ground for relief, which "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "[T]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678. Thus, courts "need not credit a complaint's 'bald assertions' or 'legal conclusions…'" *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997) (quoting *In re Burlington Coat Factory Securities Litigation*, 114 F.3d 1410, 1429-30 (3d Cir. 1997)). The court also need not assume that a plaintiff can prove facts that the plaintiff has not alleged. *Associated Gen. Contractors of Cal. v. California State Council of Carpenters*, 459 U.S. 519, 526 (1983).

A court must then determine whether the well-pleaded factual allegations give rise to a plausible claim for relief. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Palakovic v. Wetzel*, 854 F.3d 209, 219-20 (3d Cir. 2017) (quoting *Iqbal*, 556 U.S. at 678) (internal quotation marks omitted); *see also Sheridan v. NGK Metals Corp.*, 609 F.3d 239, 262 n.27 (3d Cir. 2010). The court must accept as true all allegations in the complaint, and any reasonable inferences that can be drawn therefrom are to be construed in the light most favorable to the plaintiff. *Jordan*, 20 F.3d at 1261. This "presumption of truth attaches only to those allegations for which there is sufficient factual matter to render them plausible on their face." *Schuchardt v. President of the United States*, 839 F.3d 336, 347 (3d Cir. 2016) (internal quotation and citation omitted). The plausibility determination is context-specific and does not impose a heightened pleading requirement. *Schuchardt*, 839 F.3d at 347.

Additionally, Federal Rule of Civil Procedure 8(a)(2) requires "a short and plain statement of the claim showing that the pleader is entitled to relief." Thus, a well-pleaded complaint must recite factual allegations sufficient to raise the plaintiff's claimed right to relief beyond the level of mere speculation, set forth in a "short and plain" statement of a cause of action. There is no requirement that the pleading be specific or probable. *Schuchardt*, 839 F.3d at 347 (*citing Phillips v. County of Allegheny*, 515 F.3d at 224, 233-234 (3d Cir. 2008). Rule 8(a) requires a "showing that 'the pleader is entitled to relief, in order to give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Erickson v. Pardus*, 551 U.S. 89, 93-94 (2007) (quoting Fed. R. Civ. P. 8(a)(2)); *see also Phillips*, 515 F.3d at 233 (citing *Twombly*, 550 U.S. at 545).

With the aforementioned standards in mind, a document filed *pro se* is "to be liberally construed." *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). A *pro se* complaint, "however inartfully pleaded," must be held to "less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Haines v. Kerner*, 404 U.S. 519, 520–21 (1972). Nonetheless, *pro se* plaintiffs are still subject to the basis pleading requirements of Rule 8. *Rhett v. New Jersey State Superior Court*, 260 F. App'x 513 (3d Cir. 2008). The Third Circuit has further instructed that if a complaint is vulnerable to dismissal for failure to state a claim, the district court must permit a curative amendment, unless an amendment would be inequitable or futile. *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 108 (3d Cir. 2002).

III. DISCUSSION

Defendants submit four grounds for dismissal pursuant to Rule 12(b)(6). (Doc. 58). First, they assert that SCI-Coal Township is not a proper Defendant because state correctional facilities cannot be liable under 42 U.S.C. § 1983. (Doc. 58, at 7). The Eleventh Amendment also provides SCI-Coal Township immunity from suit, according to Defendants. (Doc. 58, at 7). Second, Defendants state that Johnson's access to courts claim must fail because Johnson fails to allege this claim with sufficient particularity. (Doc. 58, at 8-10). Third, they claim that Johnson's conspiracy claim fails because details of an agreement between Defendants is not alleged and those who were allegedly involved belonged to a single corporate entity. (Doc. 58, at 10-13). Finally, Defendants submit that Johnson's retaliation claim fails because Defendants are not alleged to have been personally involved in the conduct and no adverse action occurred. (Doc. 58, at 13-15).

A. LIABILITY OF SCI-COAL TOWNSHIP

Defendants first assert that SCI-Coal Township should be dismissed from this action because it is not a proper Defendant under 42 U.S.C. § 1983. (Doc. 58, at 7). According to Defendants, SCI-Coal Township cannot be held liable because it is an entity rather than a person. (Doc. 58, at 7). Defendants aver that § 1983 does not apply to state correctional facilities. (Doc. 58, at 7).

Johnson brings his claims pursuant to 42 U.S.C. § 1983. (Doc. 34-1, at 2-3) (requesting monetary compensation for the alleged violation of constitutional rights). Section 1983 is not, itself, a source of substantive rights. *Graham v. Connor*, 490 U.S. 386, 393-94 (1989). Rather, it provides a source of vindication for substantive federal rights which are provided elsewhere. *Graham*, 490 U.S. at 394. To state a § 1983 claim, a plaintiff must show that "(1) a person

deprived him of a federal right; and (2) the person who deprived him of that right acted under color of state or territorial law." *Groman v. Township of Monalapan*, 47 F.3d 628, 633 (3d Cir. 1995). State prison facilities are not "persons" under § 1983. *Ruff v. Health Care Adm'r*, 441 F. App'x 843, 845 (3d Cir. 2011) ("The District Court properly concluded that Ruff cannot sue SCI-Coal Township or the prison's medical department itself because these entities are not 'persons' under § 1983); *Grabow v. Southern State Correctional Facility*, 726 F.Supp. 537, 538-39 (D.N.J. 1989).

Because SCI-Coal Township is a state prison facility, it is not a person under § 1983. *See Ruff*, 441 F. App'x at 845. Therefore, SCI-Coal Township is not a proper Defendant to this action. It is recommended that Defendants' Motion to Dismiss is **GRANTED** as to SCI-Coal Township and that all claims against SCI-Coal Township be dismissed with prejudice.

B. ACCESS TO COURTS CLAIM

Defendants assert that Johnson does not satisfy the pleading requirements necessary to state a claim of denial of access to the courts. (Doc. 58, at 8). Johnson must allege an actual injury by identifying an underlying claim which was "blocked or lost" due to the denial of access, according to Defendants. (Doc. 58, at 8). Since the underlying claim was "properly dismissed" by the District Court and affirmed by the Third Circuit, Defendants submit that Johnson cannot describe the underlying claim beyond it being a "mere hope." (Doc. 58, at 9) (quoting *Monroe v. Beard*, 536 F.3d 198, 205 (3d Cir. 2008)).

Johnson states that on October 27, 2017, his lawsuit docketed at 3:14-CV-1490 was dismissed after he did not have the opportunity to respond to a report and recommendation. (Doc. 34, at 1). Johnson did not have to opportunity to respond because he never received the report and recommendation. (Doc. 34, at 1). Prior to receiving the notice of dismissal,

Johnson had written a request to the mailroom at SCI-Coal Township asking for legal mail received while he was away at Luzerne County Correctional Facility. (Doc. 34, at 1). Defendant Brokenshire allegedly responded to this request "stating that the facility did not receive anything." (Doc. 34, at 1). Defendants Burn and McGinley also did not inform Johnson of legal mail addressed to Johnson, telling Johnson that any legal mail sent to him while he was away would likely have been returned to sender with a note that Johnson was "temporarily absent." (Doc. 34, at 2). Johnson asserts that the actions of Defendants Brokenshire, Burn, and McGinley caused him to lose the opportunity to present a past legal claim and that the underlying claim was "nonfrivolous or arguable." (Doc. 34, at 2).

Johnson's allegation of Defendants' failure to deliver incoming legal mail raises the "fundamental constitutional right of access to the courts" that is embodied in the First and Fourteenth Amendments. *Lewis v. Casey*, 518 U.S. 343, 346 (1996) (quoting *Bounds v. Smith*, 430 U.S. 817, 828 (1977)). Where a prisoner asserts that defendants' actions have inhibited his opportunity to present a past legal claim, he must show (1) he suffered an actual injury—that is, that he lost a chance to pursue a "nonfrivolous" or "arguable" underlying claim because of the alleged interference; and (2) he has no other "remedy that may be awarded as recompense" for the lost claim other than in the present denial-of-access suit. *Christopher v. Harbury*, 536 U.S. 403, 415 (2002); *see also Monroe v. Beard*, 536 F.3d 198, 205 (3d Cir. 2008). However, if "an inmate does not allege an actual injury to his ability to litigate a claim, his constitutional right of access to the courts has not been violated." *Caldwell v. Beard*, 305 F. App'x. 1, 3 (3d Cir. 2008) (not precedential). Thus, an access -to-courts claim differs from a general First Amendment claim of interference with prisoner mail in that a prisoner-plaintiff need not allege that the violation resulted from a "pattern and practice" or explicit policy, but

must assert an actual injury. *See Williams v. Lackawanna Cnty. Prison*, No. 1:13-CV-00849, 2015 WL 4729438, at *4 (M.D. Pa. Aug. 10, 2015). Actual injury occurs when the denial of court access "hinder[s] [the inmate's] efforts to pursue a legal claim." *Casey*, 518 U.S. at 351.

Here, Johnson did not lose his right to pursue his legal claim. After the Report and Recommendation – which Johnson allegedly was deprived of the opportunity to challenge – was adopted by the District Court, Johnson filed a motion for reconsideration with the District Court. *Johnson v. Koehler*, No. 3:14-CV-01490 (M.D. Pa. Nov. 15, 2017), ECF No. 46. The Court determined that Johnson's "motion and supporting brief fail to raise any new legal or factual issues not previously raised in his brief in opposition to Defendants' Motion to Dismiss and, to the extent relevant, addressed in the R&R." *Johnson v. Koehler*, No. 3:14-CV-01490 (M.D. Pa. Nov. 15, 2017), ECF No. 50. Furthermore, the Court held that "[Johnson's] action is incorrectly brought pursuant to § 1983." *Johnson v. Koehler*, No. 3:14-CV-01490 (M.D. Pa. Nov. 15, 2017), ECF No. 50.

Johnson also appealed the District Court's decision to the Third Circuit Court of Appeals. *Johnson v. Koehler*, No. 3:14-CV-01490 (M.D. Pa. Nov. 15, 2017), ECF No. 54. Thus, Johnson had the opportunity to bring his challenge to the report and recommendation through the appellate process. On appeal, the Third Circuit Court of Appeals agreed with the District Court's analysis of the case and affirmed dismissal of Johnson's claims on their merits. *Johnson v. Koehler*, No. 3:14-CV-01490 (M.D. Pa. Nov. 15, 2017), ECF No. 57-1.

Because Johnson did not lose his chance to pursue his claims, he cannot allege actual injury from any deprivation of his opportunity to challenge the report and recommendation in 3:14-CV-01490. *See Christopher,* 536 U.S. at 415. Johnson was able to – and did – present his challenge to the merits of the report and recommendation to the District Court in his

motion for reconsideration and to the Third Circuit in his appeal. *Johnson v. Koehler*, No. 3:14-CV-01490 (M.D. Pa. Nov. 15, 2017), ECF Nos. 46, 54.[2] In both instances, the courts addressed the merits of Johnson's opposition to the motion to dismiss. *Johnson v. Koehler*, No. 3:14-CV-01490 (M.D. Pa. Nov. 15, 2017), ECF Nos. 50, 57-1. Johnson did not suffer actual injury; therefore it is recommended that Defendants' Motion to Dismiss be **GRANTED** as to Johnson's access to courts claim and this claim be dismissed with prejudice. (Doc. 53).[3]

C. RETALIATION CLAIM

Johnson's Complaint states that Defendants Peters, Adams, and Hughes conspired to confiscate his legal material and to make false disciplinary reports in retaliation for Johnson filing grievances. (Doc. 34-2, at 1). The false disciplinary reports allegedly resulted in Johnson being placed in solitary confinement for sixty days. (Doc. 34-2, at 1). Johnson also alleges that Defendants Brokenshire, Burn, and McGinley withheld legal mail in retaliation for Johnson filing grievances and lawsuits. (Doc. 34-1, at 2).

Defendants contend that Johnson's claim of retaliation must be dismissed because the conduct giving rise to the claim was proper. (Doc. 58, at 13). According to Defendants, Johnson does not allege that Defendants Peters and McGinley were personally responsible for the actions they took. (Doc. 58, at 14). Peters and McGinley were supervisory officials overseeing the grievance process, and because Johnson was not constitutionally entitled to a grievance procedure and Peters and McGinley did not play an "affirmative part" in the

[2] Courts may consider matters of public record when deciding a motion to dismiss. *Schmidt v. Skolas*, 770 F.3d 241, 249 (3d Cir. 2014).

[3] Since Johnson was not deprived of his access to courts and "a single instance of damaged or withheld mail does not constitute a First Amendment violation," Johnson's conspiracy claim arising from legal mail being withheld should also be dismissed with prejudice. *See Alexander v. Gennarini*, 144 F. App'x 924, 926 (3d Cir. 2005).

alleged misconduct, they cannot be held liable. (Doc. 58, at 14). Defendants also assert that Johnson does not allege an adverse action arising from retaliation and does not link the Defendants to his grievances so as to allege causation. (Doc. 58, at 15).

A prisoner alleging First Amendment retaliation must satisfy three elements: (1) that he engaged in a constitutionally protected activity, (2) that he suffered some adverse action at the hands of prison officials sufficient to deter a person of ordinary firmness from exercising his constitutional rights, and (3) that "his constitutionally protected conduct was 'a substantial or motivating factor' in the decision to" take the adverse action against him. *Rauser v. Horn,* 241 F.3d 330, 333 (3d Cir. 2001) (quoting *Mount Healthy Bd. of Educ. v. Doyle,* 429 U.S. 274, 287, 97 S.Ct. 568, 50 L.Ed.2d 471 (1977)). If a plaintiff establishes a *prima facie* case of retaliation, the burden then shifts to the prison officials to demonstrate, by a preponderance of the evidence, that their actions would have been the same, even if the plaintiff were not engaging in the constitutionally protected activities. *Rauser,* 241 F.3d at 334 ("Once a prisoner demonstrates that his exercise of a constitutional right was a substantial or motivating factor in the challenged decision, the prison officials may still prevail by proving that they would have made the same decision absent the protected conduct for reasons reasonably related to a legitimate penological interest.").

Johnson sufficiently pleads all three prongs of his retaliation claim. As for the first prong of the retaliation claim, Johnson sufficiently alleges that he engaged in a constitutionally protected activity. *See Rauser,* 241 F.3d at 333. This Court has established that filing grievances is a constitutionally protected activity. *Easley v. Tritt*, No. 1:17-CV-930, 2021 WL 978815 (M.D. Pa. Mar. 16, 2021) (citing *Mearin v. Vidonish*, 450 F. App'x 100, 102 (3d Cir. 2011)). The second prong of the retaliation claim is also satisfied. Johnson's allegation

that he was subjected to falsified misconduct reports and that he was deprived of legal mail and material in retaliation for filing grievances and lawsuits constitutes sufficient adverse action. *See Smith v. Mensinger*, 293 F.3d 641, 653 (3d Cir. 2002) ("We have … held that falsifying misconduct reports in retaliation for an inmate's resort to legal process is a violation of the First Amendment's guarantee of free access to the courts."); *Feliciano v. Dohman*, No. 12-4713, 2013 WL 1234225, at *9 (E.D. Pa. Mar. 26, 2013) (holding that withholding legal materials constitutes adverse action); *Hawkins v. Brooks*, 694 F. Supp. 2d 434, 443 (W.D. Pa. 2010) (finding that defendants' conduct in withholding plaintiff's mail might deter a person of ordinary firmness from pressing charges or filing suit). Finally, the Third Circuit held that "the word 'retaliation' in [the] complaint sufficiently implies a causal link between [plaintiff's] complaints and the misconduct charges filed against him." *Mitchell v. Horn*, 318 F.3d 523, 530 (3d Cir. 2003). The third element of the retaliation claim has been sufficiently alleged. (Doc. 34).

Defendants are incorrect in asserting that Johnson fails to allege personal involvement on the part of Defendants. Johnson alleges that Defendants Burn, McGinley, and Brokenshire personally either withheld or failed to inform him of legal mail which he was entitled to receive after he had requested such mail, and that they did this in retaliation for his filing grievances and lawsuits. (Doc. 34-1). Johnson also alleges that Defendant Hughes wrote a false misconduct report and Defendant Adams confiscated his legal materials in retaliation for grievances Johnson had filed. (Doc. 34-2). Johnson does not allege an adverse action taken by Defendant Peters. (Doc. 34-2, at 1).

As such, it is recommended that Defendants' Motion to Dismiss be **DENIED** as to Johnson's claim of retaliation against Defendants Burn, McGinley, Brokenshire, Hughes, and Adams. It is recommended that the Motion be **GRANTED** as to Defendant Peters.

D. CONSPIRACY CLAIM

Besides his conspiracy claim arising solely from the withholding of legal mail discussed *supra*, Johnson alleges that Defendants Peters, Adams, and Hughes conspired to make false disciplinary reports and to wrongly confiscate his legal material in retaliation for Johnson filing prior grievances. (Doc. 34-2, at 1). Again, the false disciplinary reports allegedly resulted in Johnson being placed in solitary confinement for sixty days. (Doc. 34-2, at 1). Furthermore, Johnson alleges that Defendants McGinley, Burn, and Brokenshire conspired to deprive him of incoming legal mail in retaliation for grievances and lawsuits he had filed. (Doc. 34-1).

Defendants submit that Johnson's conspiracy claims must fail because "Plaintiff has not set forth a single averment to demonstrate an agreement was formed between Defendants." (Doc. 58, at 11-12). Furthermore, "[t]he [Supreme] Court's precedent indicates that there is no unlawful conspiracy when officers within a single corporate entity consult among themselves and then adopt a policy for the entity." (Doc. 58, at 12) (citing *Copper-weld Corp. v. Independence Tube Corp.*, 467 U.S. 752, 769-71 (1984)). Such agreements do not give rise to a lawful conspiracy and are also the subject of qualified immunity, according to Defendants. (Doc. 58, at 12).

First, the doctrine applied by Defendants in their Motion to Dismiss is the intra-corporate conspiracy doctrine. (Doc. 58, at 12). This Court recently explained that although "the United States Supreme Court has never held that the intra-corporate conspiracy doctrine does not apply to constitutional claims, the United States Court of Appeals for the Third

Circuit more than four decades ago first held that such a defense does *not* apply to civil rights actions, particularly when an individual is not acting in his or her official capacity." *Thomas v. Duvall*, No. 3:16-CV-00451, 2019 WL 6769324, at *2 (M.D. Pa. Dec. 12, 2019). Furthermore, "'the intra-corporate conspiracy doctrine [is] inappropriate to determine at the motion to dismiss stage, as it is "a defense and requires a factual inquiry."'" *Page-Jones v. Berfield*, No. 1:20-CV-1042, 2020 WL 7480649, at *5 n.2 (M.D. Pa. Dec. 18, 2020) (quoting *Cole v. Encapera*, No. 15-104, 2015 WL 8528449, at *8 (W.D. Pa. Dec. 11, 2015)). For these reasons, it is recommended that Defendants' Motion to Dismiss not be granted on this ground.

The allegations of Johnson's Amended Complaint, however, do not form the basis of a conspiracy claim. (Doc. 34-1; Doc. 34-2). To sustain a conspiracy claim under § 1983, a plaintiff must establish that: (1) the Defendants deprived him of a right secured by the Constitution or laws of the United States; and (2) conspired to do so while acting under color of state law. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 150 (1970); *Marchese v. Umstead*, 110 F. Supp. 2d 361, 371 (E.D. Pa. 2000). Additionally, to "sufficiently allege a conspiracy, a plaintiff must show a 'combination of two or more person[s] to do a criminal act, or to do a lawful act by unlawful means or for an unlawful purpose.'" *Marchese*, 110 F. Supp. 2d at 371 (quoting *Panayotides v. Rabenold*, 35 F. Supp. 2d 411, 419 (E.D. Pa. 1999) (internal citations omitted)). A plaintiff must make "specific factual allegations of combination, agreement, or understanding among all or between any of the defendants to plot, plan, or conspire to carry out the alleged chain of events." *Marchese*, 110 F. Supp. 2d at 371 (quoting *Panayotides v. Rabenold*, 35 F. Supp. 2d 411, 419 (E.D. Pa. 1999) (internal citations omitted)).

In the case at bar, there are no plausible allegations that would allow the Court to reasonably infer a claim for conspiracy. (Doc. 34-1; Doc. 34-2). Johnson fails to allege any well-pleaded facts from which a conspiratorial agreement could be inferred. *See Tarapchak v. Lackawanna Cty.*, 173 F. Supp. 3d 57, 72 (M.D. Pa. 2016). Johnson only alleges in conclusory fashion that defendants conspired; at no point does he provide "specific factual allegations" of Defendants coming together in "combination, agreement, or understanding." (Doc. 34-1; Doc. 34-2); *see Marchese*, 110 F. Supp. 2d at 371. As such, it is recommended that Defendants' Motion to Dismiss be **GRANTED** as to Johnson's claim of conspiracy and that this claim be dismissed with prejudice.

IV. LEAVE TO AMEND

The Third Circuit has instructed district courts to permit a curative amendment if a complaint is vulnerable to dismissal for failure to state a claim, unless an amendment would be inequitable or futile. *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 108 (3d Cir. 2002). As such, it shall be recommended that Johnson be granted leave to amend his Complaint so as to (i) clarify any adverse action taken by Defendant Peters in retaliation for Johnson's grievances, and (ii) re-allege his claim of conspiracy in accord with the above analysis. Any amendment should address **only** Defendant Peters and his conduct as it relates to Johnson's claim of retaliation, and/or allegations of conspiracy arising from false disciplinary reports and confiscation of legal material. Any amendment would **supplement** the currently operative Amended Complaint. (Doc. 34).

It is recommended that Johnson not be granted leave to amend his claims against SCI-Coal Township because it cannot be a proper defendant under the law. *See Ruff*, 441 F. App'x at 845. It is also recommended that Johnson not be granted leave to amend his access to courts

claim because public record establishes that he was not deprived of his access to courts. *See Johnson v. Koehler*, No. 3:14-CV-01490 (M.D. Pa. Nov. 15, 2017), ECF Nos. 46, 54.

V. RECOMMENDATION

Based on the foregoing, it is respectfully recommended that Defendants' Motion to Dismiss is **GRANTED** as to the entirety of Johnson's claims against SCI-Coal Township, Johnson's First Amendment access-to-courts claim, Johnson's conspiracy claims, and Johnson's claim of retaliation against Defendant Peters. (Doc. 53). It is recommended that Defendants' Motion to Dismiss is **DENIED** as to Johnson's claims of retaliation against Defendants Burn, McGinley, Brokenshire, Hughes, and Adams. It is further recommended that Plaintiff's Motion for Default Judgment and Request for Summary Judgment – construed as a proper motion – be **DENIED**. (Doc. 55; Doc. 61). Finally, it is recommended that Johnson be granted leave to amend his claim of retaliation against Defendant Peters and his claim of conspiracy arising from false disciplinary reports and confiscation of legal material.

BY THE COURT:

Dated: September 18, 2021

s/ Karoline Mehalchick

KAROLINE MEHALCHICK
United States Magistrate Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

ARMONI MASUD JOHNSON, Plaintiff, v. SUPERINTENDENT MCGINLEY, et al., Defendants.	CIVIL ACTION NO. 4:18-CV-01714 (BRANN, J.) (MEHALCHICK, M.J.)

NOTICE

NOTICE IS HEREBY GIVEN that the undersigned has entered the foregoing **Report and Recommendation** dated **September 18, 2021**. Any party may obtain a review of the Report and Recommendation pursuant to Rule 72.3, which provides:

> Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636(b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

Dated: September 18, 2021

s/ Karoline Mehalchick
KAROLINE MEHALCHICK
United States Magistrate Judge