UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

AUREL SMITH,

Plaintiff,

v. **9:11-CV-0241 (TJM/TWD)**

M. WILDERMUTH, et al.,

Defendants.

THOMAS J. McAVOY,
Senior United States District Judge

DECISION & ORDER

I. INTRODUCTION

This *pro se* action brought pursuant to 42 U.S.C. § 1983, was referred to the Hon. Thérèse Wiley Dancks, United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). No objections to Magistrate Judge Dancks' Report-Recommendation and Order [dkt. # 66] have been filed, and the time to do so has expired.

II. DISCUSSION

After examining the record, this Court has determined that the Report-Recommendation and Order is not subject to attack for plain error or manifest injustice.

III. CONCLUSION

Accordingly, the Court **ADOPTS** the Report-Recommendation and Order [dkt. # 66]

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for the reasons stated therein. Therefore, it is hereby

ORDERED that Defendants respond to (1) the excessive force claim against Defendants Wildermuth, Ensel, Slater, Hale, Morris, and Noethe; (2) the conspiracy claim against Defendants Wildermuth, Ensel, Slater, Hale, Morris, and Noethe; (3) the First Amendment claim against Defendant Wildermuth; (4) the Eighth Amendment failure-to- intervene claim against Defendants Bailey, Chewens, and Saez; (5) the Eighth Amendment conditions of confinement claim against Defendant Martuscello; and (6) the Eighth Amendment failure-to-protect claim against Defendants Rock and Evans. And it is further

ORDERED that the state law claims and the RLUIPA claim are **DISMISSED without leave to amend**; and it is further

ORDERED that the equal protection claim against Defendant Martuscello is **DISMISSED with leave to amend**.

Dated: January 29, 2015

Thomas J. McAvoy
Senior, U.S. District Judge