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

CHARLESTON DIVISION

KEITH W.R. LOWE,

Plaintiff,

v. CIVIL ACTION NO. 2:13-cv-22416

CAPTAIN R. MATHENY, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending before the court is plaintiff's Motion for Preliminary Injunction [Docket 8] and Renewed Motion for Preliminary Injunction [Docket 17]. This action was referred to the Honorable Dwane L. Tinsley, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and has recommended that the court **DENY** the plaintiff's Motions for Preliminary Injunction [Docket 8 and 17].

A district court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. 28 U.S.C. § 636(b)(1)(C). This court is not, however, required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). When a party does make objections, but these objections are so general or conclusory that they fail to direct the district court to any specific error by the magistrate judge, de novo review is

unnecessary. *Howard's Yellow Cabs, Inc. v. United States*, 987 F.Supp. 469, 474 (W.D.N.C. 1997). A litigant who makes only vague objections to the magistrate's findings prevents the district court from focusing on disputed issues and thus renders the initial referral to the magistrate judge useless. *Id.* Such a general objection does not meet the requirements of 28 U.S.C. § 636(b)(1), and failure to file a specific objection constitutes a waiver of the right to de novo review. *Id.* (citing *Mercado v. Perez Vega*, 853 F.Supp. 42, 44 (D.P.R.1993)).

In this case, objections to the Magistrate Judge's proposed findings of fact and recommendation ("PF&R") were due on August 25, 2014. On September 11, 2014, instead of filing objections, the plaintiff filed a Letter-Form Motion to Amend the Second Amended Complaint [Docket 29].

In light of the liberal construction given to pro se filings, I will construe the plaintiff's Letter-Form Motion to Amend the Second Amended Complaint [Docket 29] as a timely objection to the Magistrate Judge's PF&R. *See Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978); *see also Traywick v. Med. Univ. of S. C.*, 34 F.3d 1067 (4th Cir. 1994) (table decision) ("[W]e find that the notice of appeal filed within the objection period should be construed as an objection to the magistrate judge's report.").

In his Letter-Form Motion to Amend the Second Amended Complaint [Docket 29], the plaintiff does not direct any specific objections to the Magistrate Judge's PF&R. The plaintiff instead rewrote his complaint and requests to make changes as to the defendants. (*See* Pl.'s Letter-Form Mot. to Amend Second Am. Compl. [Docket 29], at 1-2). In reference to the PF&R, the plaintiff only writes that he received it and that he has removed any class action language in his Proposed Third Amended Complaint because "Judge Tinsley made several references to the fact that [the plaintiff's] Motions for Preliminary Injunction were 'not re-drafted to remove the class

action language[.]'" (*Id.* at 1). Even so, this is not a specific objection to the Magistrate Judge's findings and recommendation. It does not appear that the plaintiff's inclusion of class action language had any effect on the Magistrate Judge's findings. In fact, the Magistrate Judge identified and addressed the "specific allegations concerning Lowe's circumstances at MOCC[.]" (PF&R [Docket 28], at 7-8).

Because the plaintiff does not address any specific error by the Magistrate Judge, the court **FINDS** that a de novo review is not required. Accordingly, the court accepts and incorporates herein the findings and recommendation of the Magistrate Judge and orders judgment consistent with the findings and recommendations. The court **DENIES** the plaintiff's Motions for Preliminary Injunction [Docket 8 and 17] without prejudice. This matter is still referred to Magistrate Judge Tinsley.

The court **DIRECTS** the Clerk to send a copy of this Order to Magistrate Judge Tinsley, counsel of record, and any unrepresented party.

ENTER: September 18, 2014

JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE