UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

HOWARD PORTER,

Plaintiff,

v. Case No. 6:15-cv-1715-Orl-37DAB

THE CITY OF PORT ORANGE; BOB FORD; DREW BASTION; DENNIS KENNEDY; ALLEN GREEN; DONALD BURNETT; WESH 2; BAY NEWS 9; MY NEWS 13; WKMG TV LOCAL 6; TRAVELL EILAND; SHAUN CHAIYBHAT; BLAINE TOLISON; SAUL SENZ; LACY MCLAUGHLIN; KATIE KURSTAIN; CHRISTINE HARING; THOMAS HARING; MARGIE PATCHETT; JACQUELINE BODNER; NICOLE SANCHEZ; and JOHN AND JANE DOE,

Defendants.

ORDER

This cause is before the Court on the following:

1. Plaintiff's Motion to Separate Complaint and Affidavit in Support of Complaints (Doc. 16), filed March 23, 2016;

2. Plaintiff's Second Complaint (Doc. 17), filed March 23, 2016;

3. Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs (Doc. 18), filed March 23, 2016;

4. U.S. Magistrate David A. Baker's Report and Recommendation (Doc. 19), filed May 12, 2016;

5. Plaintiff's Written Objections to the Report and Recommendation (Doc. 25), filed June 13, 2016;

6. Plaintiff's Third Complaint (Doc. 23), filed June 13, 2016;

7. Plaintiff's [Second] Third Complaint (Doc. 24), filed June 13, 2016; and

8. Plaintiff's Motion to Separate Complaint (Doc. 22), filed June 13, 2016.

Alongside his "Second Complaint" (Doc. 17 ("**Second Amended Complaint**")), Plaintiff filed an Application to Proceed in District Court Without Prepaying Fees or Costs (Doc. 18 ("**Application**")). U.S. Magistrate Judge David A. Baker recommends that the Court deny Plaintiff's Application and dismiss the Second Amended Complaint on the ground that Plaintiff fails to affirmatively demonstrate complete diversity to establish the Court's subject matter jurisdiction. (Doc. 19 ("**R&R**").) Magistrate Judge Baker also identified the Second Amended Complaint as an impermissible shotgun complaint. (*Id.*)

On June 13, 2016, Plaintiff: (1) objected to the R&R (Doc. 25 ("**Objections**")); (2) filed two separate "Third Complaints" against distinct defendants (respectively, Doc. 23 ("**1st Third Amended Complaint**"); Doc. 24 ("**2d Third Amended Complaint**")); and (3) moved the Court to "separate" his complaint and "appoint a second docket number for the [2d Third Amended Complaint]" (Doc. 22 ("**Motion to Separate**")).[1]

When a party objects to a magistrate judge's findings, the district court must "make

[1] In light of the 1st and 2d Third Amended Complaints and the corresponding Motion to Separate Complaint (Doc. 22), Plaintiff's Motion to Separate Complaint and Affidavit in Support of Complaints (Doc. 16) directed to the Second Amended Complaint is due to be denied.

a de novo determination of those portions of the report . . . to which objection is made." 28 U.S.C. § 636(b)(1). The district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." *Id.* The district court must consider the record and factual issues based on the record independent of the magistrate judge's report. *Ernest S. ex rel. Jeffrey S. v. State Bd. of Educ.*, 896 F.2d 507, 513 (11th Cir. 1990).

Upon consideration of the Second Amended Complaint, R&R, and Objections, the Court agrees with Magistrate Judge Baker's well-reasoned recommendation and finds that the R&R is due to be adopted. The Court will carry the Application and await a renewed recommendation from Judge Baker as to the Motion to Separate and the viability of the 1st and 2d Third Amended Complaints.

Accordingly, it is hereby **ORDERED AND ADJUDGED** that:

1. U.S. Magistrate David A. Baker's Report and Recommendation (Doc. 19) is **ADOPTED** and **CONFIRMED**.
2. Plaintiff's Written Objections to the Report and Recommendation (Doc. 25) are **OVERRULED**.
3. Plaintiff's "Second Complaint" (Doc. 17) is **DISMISSED WITHOUT PREJUDICE**.
4. Plaintiff's Motion to Separate Complaint and Affidavit in Support of Complaints (Doc. 16) is **DENIED AS MOOT**.
5. The Motion to Separate Complaint (Doc. 22), Third Complaints (Docs. 23, 24), and Application to Proceed in District Court Without Prepaying Fees or Costs (Doc. 18) are **REFERRED** to U.S. Magistrate Judge David A. Baker

for a report and recommendation.

DONE AND ORDERED in Chambers in Orlando, Florida, on June 24, 2016.

ROY B. DALTON JR.
United States District Judge

Copies:

Counsel of Record

Pro Se Party