

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

DOMICIANO REDONDO,

Plaintiff,

v.

Case No. 6:17-cv-55-Orl-37TBS

JACK PARKER; WAYNE S. STEIN; and
JAMES H. RICHEY,

Defendants.

ORDER

This cause is before the Court on the following:

1. U.S. Magistrate Judge Thomas B. Smith's Report and Recommendation (Doc. 3), filed January 17, 2017; and
2. Plaintiff's Notice of Appeal (Doc. 6), which the Court construes as an objection to U.S. Magistrate Judge Thomas B. Smith's Report and Recommendation, filed January 30, 2017.

BACKGROUND

Plaintiff—proceeding *pro se*—initiated this action for suppression of his rights of free speech and to petition the government against Defendants, who are employed at the Eastern Florida State College (“**College**”), for implementing a time restrictive policy of the College’s library computers (“**Computer Policy**”). (See Doc. 1.) Along with his Complaint, Plaintiff moved to proceed *in forma pauperis*. (Doc. 2 (“**IFP Motion**”).) On referral, U.S. Magistrate Judge Thomas B. Smith issued a Report, recommending that the Court deny the IFP Motion and dismiss the Complaint without prejudice. (Doc. 3 (“**R&R**”).) On January 30, 2017, Plaintiff filed a document titled “Notice of Appeal” with the Court.

(Doc. 6 (“**Filing**”).) But Plaintiff cannot directly appeal the R&R to the U.S. Court of Appeals for the Eleventh Circuit as the R&R is not itself a final and appealable order. See *Perez-Prigeo v. Alachua Cty. Clerk of Court*, 148 F.3d 1272, 1273 (11th Cir. 1998). Hence the Court will construe the Filing as an objection to Magistrate Judge Smith’s R&R.

When a party objects to a magistrate judge’s findings, the district court must “make 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).

In his R&R, Magistrate Judge Smith found that: (1) the Complaint is a reiteration of Plaintiff’s earlier lawsuit against the College, (see Case No. 6:15-cv-1818-40-DAB (“**Redondo I**”)); (2) although Plaintiff avers that he is suing Defendants as individuals, it is apparent from the Complaint that Plaintiff is suing Defendants in their official capacities; and (3) because the facts here are identical to *Redondo I*, the doctrine of sovereign immunity is equally applicable to Defendants. (Doc. 3, pp. 5–6.) In his Filing, Plaintiff represents that he is appealing the recommendations in the R&R but states no further grounds for his objection. (See Doc. 6.)

Having conducted an independent, de novo review of the entire record and the record in *Redondo I*, the Court agrees with Magistrate Judge Smith’s findings and recommendations. Indeed, Plaintiff has brought a nearly identical suit against the College once before. (Compare *Redondo I*, Doc. 8, with Doc. 1.) Plaintiff cannot now do an

end-run around the Eleventh Amendment by styling his Complaint as one against Defendants in their individual capacity. Especially here, where Plaintiff has repurposed the same facts from *Redondo I*, making clear that Defendants are being sued in their official capacities. (See Doc. 1, ¶¶ 17, 20, 21.)


In light of the foregoing, the Court finds that Plaintiff's Filing—which the Court construes as Plaintiff's objection to the R&R—is due to be overruled, the R&R is due to be adopted, and the Complaint is due to be dismissed with prejudice as amendment would be futile.

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

1. Plaintiff's Notice of Appeal (Doc. 6), which the Court construes as an objection to U.S. Magistrate Judge Thomas B. Smith's Report and Recommendation is **OVERRULED**.
2. U.S. Magistrate Judge Thomas B. Smith's Report and Recommendation (Doc. 3) is **ADOPTED, CONFIRMED**, and made a part of this Order.
3. Plaintiff's Complaint (Doc. 1) is **DISMISSED WITH PREJUDICE**.
4. Plaintiff's Motion for Recusal (Doc. 7) is **DENIED AS MOOT**.
5. The Clerk is **DIRECTED** to close the case.

DONE AND ORDERED in Chambers in Orlando, Florida, on February 6, 2017.




ROY B. DALTON JR.
United States District Judge

Copies:

Counsel of Record

Pro Se Party