IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

LARRY G. HARRIS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 11-cv-00973-JPG-PMF
	)	
WARDEN HODGE, *et al*.,	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER

This matter comes before the Court on the Report and Recommendation ("R & R") (Doc. 142) of Magistrate Judge Philip M. Frazier with regard to Plaintiff Larry G. Harris' Motion for Summary Judgment (Doc. 119) and Defendants' Motion for Summary Judgment (Doc. 124). The parties each filed responses in opposition (Docs. 128 and 131, respectively).

The Court may accept, reject or modify, in whole or in part, the findings or recommendations of the magistrate judge in a report and recommendation. Fed. R. Civ. P. 72(b)(3). The Court must review *de novo* the portions of the report to which objections are made. The Court has discretion to conduct a new hearing and may consider the record before the magistrate judge anew or receive any further evidence deemed necessary. *Id.* "If no objection or only partial objection is made, the district court judge reviews those unobjected portions for clear error." *Johnson v. Zema Sys. Corp.*, 170 F.3d 734, 739 (7th Cir. 1999). As objections have been filed, the Court will review those portions *de novo*.

The R & R recommends that the Defendants' Motion for Summary Judgment be granted with regard to Count 1 and 2 and denied with regard to Count 3. It further recommends that the Plaintiff's Motion for Summary Judgment be denied.

Plaintiff's Second Amended Complaint (Doc. 93) contains four claims and it has come to the Court's attention that a merits review pursuant to 28 U.S.C. § 1915A was not conducted. As such, the counts set forth in the R & R do not reflect the claims in the Second Amended Complaint. The Court notes that the Plaintiff's Motion for Summary Judgment and the Defendants' Motion for Summary Judgment address allegations – not specific counts – and both motions request summary judgment in their favor yet neither party address all the allegations contained in Plaintiff's Amended Complaint.

The Court is aware that some defendants and at least one claim was dismissed with prejudice (Doc. 8) and then were reinstated by this Court's Order (Doc. 22) of December 6, 2015. The *de novo* review of this matter indicates that there is some confusion with regard to the claims proceeding forward in this matter. Although the Court is hesitant to cause any delay in this matter, the interests of justice deem that the Plaintiff's Second Amended Complaint be review pursuant to 28 U.S.C. § 1915A and upon completion of the review, this matter can proceed with all parties having a clear understanding of the claims at issue.

Accordingly, the Court hereby **REJECTS** the Report and Recommendation in its entirety (Doc. 142). Magistrate Judge Frazier is **DIRECTED** to conduct a merits review pursuant to 28 U.S.C. § 1915A of Plaintiff's Second Amended Complaint (Doc. 92) and submit a Report and Recommendation. All pending motions are **TERMINATED** and the Court will provide the parties an opportunity for filing dispositive motions upon completion of the merit review.

IT IS SO ORDERED.

DATED: 7/29/2015

s/J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE