

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LAVELLE W. SEARCY, *et al.*,

Plaintiffs,

v.

Case No. 2:10-CV-11242
Honorable Denise Page Hood

MACOMB COUNTY JAIL, *et al.*,

Defendants.

**ORDER ACCEPTING AND ADOPTING MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION AND DENYING PLAINTIFF'S MOTION FOR DEFAULT
JUDGMENT AGAINST DEFENDANT VALERIE WATKINS AND PLAINTIFF'S
REQUEST FOR MOTION FOR EXTENSION OF TIME TO FILE OBJECTION TO
MAGISTRATE'S REPORT AND RECOMMENDATION AND DEEMING MOOT
PLAINTIFF'S MOTION TO PROCEED IN FORMA PAUPERIS AND REQUEST FOR
TRANSMISSION OF THE ENTIRE RECORD**

This matter is before the Court on Magistrate Judge Paul J. Komives's Report and Recommendation ("R&R"), dated September 12, 2011 [**Docket No. 100**] and R&R dated January 31, 2012 [**Docket No. 130**]. Also before the Court is Plaintiff's February 13, 2012 request for additional time to respond to the Magistrate Judge's January 31, 2012 R&R [**Docket No. 136**]. Plaintiff did not file objections to the September 12, 2011 R&R. Defendants did not file objections to either R&R.

In his September 12, 2011 R&R, the Magistrate Judge recommended that this Court deny Plaintiff's motion for default judgment against Defendant Valerie Watkins because default judgment is not permitted under the Prison Litigation Reform Act and Defendant Valerie Watkins has not been properly served [**Docket No. 100**]. The Magistrate further recommended in its January 31, 2012 R&R that this Court deny Plaintiff's motion to proceed *in forma pauperis*

and request for transmission of entire record because Plaintiff had not established indigency or that the appeal would be taken in good faith. Specifically, the Magistrate Judge noted that Plaintiff had not filed a timely appeal and Plaintiff's appeal of the denial of his motion to certify a class was not a final order or the type of order from which an interlocutory appeal could be made.

When examining a Magistrate's Report and Recommendation, 28 U.S.C. § 636 governs the standard of review. This 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). This Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." *Id.*

For the reasons stated in the Magistrate Judge's September 12, 2011 and January 31, 2012 R&Rs, the Court accepts and adopts the Magistrate's Judge's findings of fact and conclusions of law in their entirety. The Court notes that the Sixth Circuit dismissed Plaintiff's appeal because there was no final or immediately appealable order from the district court and the Sixth Circuit, therefore, did not have jurisdiction [Docket No. 138]. Plaintiff's request to proceed *in forma pauperis* is moot given the Sixth Circuit's dismissal of Plaintiff's appeal.

Accordingly,

IT IS ORDERED that the Magistrate Judge Paul J. Komives's Report and Recommendations [**Docket Nos. 100 & 130**] are **ADOPTED** and **ACCEPTED** as this Court's findings of fact and conclusions of law.

IT IS FURTHER ORDERED that Plaintiff's Motion for Default Judgment against Defendant Valerie Watkins [**Docket No. 88, filed July 12, 2011**] is **DENIED**.

IT IS FURTHER ORDERED that Plaintiff's Motion to Proceed *in Forma Pauperis* and Request for Transmission of the Entire Record [**Docket No. 125, filed November 10, 2011**] is deemed **MOOT**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Extension of Time to File Response to the Magistrate Judge's January 31, 2012 Report and Recommendation [**Docket No. 136, filed February 13, 2012**] is **DENIED**.

S/Denise Page Hood
Denise Page Hood
United States District Judge

Dated: April 12, 2012

I hereby certify that a copy of the foregoing document was served upon counsel of record on April 12, 2012, by electronic and/or ordinary mail.

S/LaShawn R. Saulsberry
Case Manager