

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL ARNOLD,

Plaintiff,

v.

Civil Case No. 13-14137
Honorable Linda V. Parker

DANIEL H. HEYNS, MICHAEL
MARTIN, and BRAD PURVIS,

Defendants.

_____/

**OPINION AND ORDER (1) ADOPTING MAGISTRATE JUDGE'S
JUNE 12, 2015 REPORT & RECOMMENDATION [ECF NO. 60]; (2)
DENYING PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING
ORDER AND PRELIMINARY INJUNCTION [ECF NO. 53]; AND (3)
DENYING DEFENDANTS' MOTION TO DISMISS OR SANCTION
PLAINTIFF [ECF NO. 58]**

On September 27, 2013, Plaintiff commenced this action against Defendants pursuant to 42 U.S.C. § 1983.¹ In the Complaint, Plaintiff alleges that Defendants are violating his rights under the First and Fourteenth Amendments and the Religious Land Use and Institutionalized Persons Act (“RLUIPA”) by implementing a Michigan Department of Corrections (“MDOC”) policy directive that replaces all previously

¹ Two other individuals initially were named as Plaintiffs; however, they withdrew from this action on March 11, 2015. (ECF No. 52.)

offered religious menus with a vegan diet.² Plaintiff is an Orthodox Jew incarcerated in an MDOC prison facility. The matter has been referred to Magistrate Judge Mona K. Majzoub for all pretrial matters. (ECF No. 11.)

On April 9, 2015, Plaintiff filed a second motion for temporary restraining order and/or a preliminary injunction. (ECF No. 53.) On June 2, 2015, Defendants filed a motion to dismiss or sanction Plaintiff due to Plaintiff's failure to participate in discovery. (ECF No. 58.) On June 12, 2015, Magistrate Judge Majzoub issued an R&R in which she recommends that the Court deny both motions. (ECF No. 60.) With respect to Plaintiff's request for injunctive relief, Magistrate Judge Majzoub finds that facts still remain to be developed in order to evaluate Plaintiff's likelihood of success and therefore his right to obtain injunctive relief at this time. (*Id.* at Pg ID 964.) Under the circumstances presented, Magistrate Judge Majzoub finds monetary sanctions, much less dismissal as a sanction, inappropriate and inherently unjust in response to Plaintiff's failure to appear at his scheduled deposition. (*Id.* at Pg ID 965-66.) Magistrate Judge Majzoub does recommend that the Court warn Plaintiff that any further failure to participate in discovery or comply with the Court's orders may result in sanctions, including dismissal of this matter. (*Id.* at 966.)

²In an Opinion and Order issued June 24, 2014, this Court adopted Magistrate Judge Mona K. Majzoub's recommendation to sua sponte dismiss Plaintiffs' Fourteenth Amendment Equal Protection claim. (ECF No. 28.)

At the conclusion of her R&R, Magistrate Judge Majzoub informs the parties that they must file any objections to the R&R within fourteen days of service. (*Id.*) Neither party has filed objections to the R&R.

The Court has carefully reviewed the R&R and concurs with the conclusions reached by Magistrate Judge Majzoub. The Court therefore adopts Magistrate Judge Majzoub's June 12, 2015 Report and Recommendation.

Accordingly,

IT IS ORDERED, that Plaintiff's Second Emergency Motion for Temporary Restraining Order and for Preliminary Injunction [ECF No. 53] is **DENIED**;

IT IS FURTHER ORDERED, that Defendants' Motion to Involuntarily Dismiss this Matter or Sanction Plaintiff for Failing to Participate in Discovery [ECF No. 58] is **DENIED**, although Plaintiff is warned that any further failure to participate in discovery or comply with the Court's orders may result in sanctions, including dismissal of this matter.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: July 13, 2015

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, July 13, 2015, by electronic and/or U.S. First Class mail.

s/ Richard Loury
Case Manager