UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LUCIANO VASQUEZ,

Plaintiff,

v.

DEPARTMENT OF HUMAN SERVICES,

Defendant.
_____/

Case No. 1:16-cv-1238

HON. JANET T. NEFF

OPINION AND ORDER

Plaintiff, proceeding pro se, initiated this case against Defendant, alleging trespass. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R, Dkt 7) on October 21, 2016, recommending that this Court dismiss Plaintiff's complaint for failure to state a claim upon which relief may be granted, pursuant to FED. R. CIV. P. 12(b)(6) (*id*. at PageID.14). Pending before the Court are Plaintiff's objections to the Report and Recommendation (Objs., Dkt 8). In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

In his objections, Plaintiff merely asserts that he will produce additional paperwork to allege facts sufficient to show trespass if his case is allowed to proceed (Objs., Dkt 8 at PageID.19–20). Such an assertion does not warrant rejection of the Magistrate Judge's Report and Recommendation. As the Magistrate Judge explained, a complaint must contain "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face'" (R&R, Dkt 7 at PageID.14, citing

Ashcroft v. Iqbal 556 U.S. 662, 678 (2009)). Plaintiff's complaint is "devoid of facts that would create a federal claim" (*id.* at PageID.16). Plaintiff's assurance that he will provide facts sometime in the future does not cure the deficient complaint. And to the extent Plaintiff wishes the Court to consider factual allegations made in Plaintiff's other pending cases, such is not appropriate because when evaluating a complaint under 12(b)(6), the Court may consider the complaint, exhibits, public records, and items appearing in "*the record of the case*." *See Bassett v. Nat'l Collegiate Ass'n*, 528 F.3d 426, 430 (6th Cir. 2008) (emphasis added). Plaintiff's objection is without merit.

Accordingly, the Court will approve and adopt the Report and Recommendation as its opinion, and a Judgment will be entered consistent with this Opinion and Order. See FED. R. CIV. P. 58. For the above reasons and because this action was filed *in forma pauperis,* this Court also certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this Judgment would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610-11 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211–12 (2007).

THEREFORE, IT IS ORDERED that the Objections (Dkt 8) are DENIED and the Report and Recommendation (Dkt 7) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that the Complaint (Dkt 1) is DISMISSED pursuant to 28 U.S.C. § 1915(e)(2)(B) for the reasons stated in the Report and Recommendation**.**

IT IS FURTHER ORDERED that the Court certifies pursuant to 28 U.S.C. § 1915(a) that an appeal of the decision would not be taken in good faith.

Date: January 5, 2017

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge