

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

XAVIER HENRY,

Plaintiff,

v.

UNKNOWN BERGERON, et al.,

Defendants.

Case No. 2:15-CV-197

HON. GORDON J. QUIST

ORDER ADOPTING REPORT AND RECOMMENDATION

On February 23, 2017, Magistrate Judge Timothy P. Greeley issued a Report and Recommendation (R & R) recommending that the Court deny Plaintiff's motion for a temporary restraining order and a preliminary injunction. The magistrate judge recommended denying the motion because the Court previously dismissed Plaintiff's First Amendment, RLUIPA, and conspiracy claims and Plaintiff failed to show a strong or substantial likelihood of success on the merits of his remaining claim. The magistrate judge also recommended denial in light of the deference federal courts accord state officials on matters of prisoner administration.

Plaintiff has filed an Objection to the R & R, arguing that he has demonstrated that the preliminary injunction factors weigh in favor of the injunctive relief Plaintiff requests.

After conducting a *de novo* review of the R & R, Plaintiff's Objection, and the pertinent portions of the record, the Court concludes that the R & R should be adopted and Plaintiff's motion for injunctive relief should be denied.

Following the issuance of the R & R, the Court denied Plaintiff's motion for reconsideration of the dismissal of Plaintiff's First Amendment, RLUIPA, and conspiracy claims, leaving his Eighth

Amendment claim against Defendants Bergeron, Johnson, and Rosebrock as the only remaining claim in the case. In this Court's judgment, Plaintiff has not demonstrated likelihood of success on the merits of his Eighth Amendment claim. Moreover, the relief Plaintiff seeks pertains to his dismissed claims. Finally, because the injunctive relief Plaintiff seeks actually challenges an MDOC policy, the proper defendant for such relief appears to be the director of the MDOC, who was not a party to this case. *See Hardaway v. Haggerty*, No. 05-70362, 2010 WL 1131446, at *5 (E.D. Mich. Mar. 22, 2010) (noting that the proper defendant in a claim challenging an MDOC policy and seeking injunctive relief is the director of the MDOC).

Therefore,

IT IS HEREBY ORDERED that the Magistrate Judge's Report and Recommendation issued February 23, 2017 (ECF No. 111) is **ADOPTED** as the Opinion of the Court. Plaintiff's Motion for Injunctive Relief (ECF No. 83) is **DENIED**.

Dated: June 7, 2017

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE