

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

ROBERT L. DYKES, #201541,)	
Plaintiff,)	
)	No. 2:17-cv-209
-v-)	
)	Honorable Paul L. Maloney
THOMAS FINCO, et al.,)	
Defendants.)	
_____)	

ORDER ADOPTING IN PART REPORT AND RECOMMENDATION

Plaintiff Dykes alleges Defendants violated his sincerely held religious beliefs through their actions denying him alternative meals. Defendants are employees of the Michigan Department of Corrections. The magistrate judge issued report (ECF No. 32) recommending the dispositive of four pending motions. Plaintiff filed objections. (ECF No. 35.)

After being served with a report and recommendation (R&R) issued by a magistrate judge, a party has fourteen days to file written objections to the proposed findings and recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). A district court judge reviews de novo the portions of the R&R to which objections have been filed. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). Only those objections that are specific are entitled to a de novo review under the statute. *Mira v. Marshall*, 806 F.2d 636, 637 (6th Cir. 1986) (per curiam).

Objection 1. The magistrate judge recommends granting Defendants' motion for summary judgment (ECF No. 16) and dismissing Defendants Leach and Rink. Plaintiff's

objection to this recommendation is overruled. Plaintiff failed to name either Leach or Rink in the relevant grievances. Plaintiff's authority is factually distinct in critical ways. When the grievance fails to name any defendant, and prison authorities address the claim on the merits, the prison authorities cannot later assert the failure to exhaust remedies. Here, Plaintiff did name some defendants, but not others. Defendants are entitled to now argue that Plaintiff failed to exhaust his remedies as to the individuals not identified in the grievance.

Objection 2. The magistrate judge recommends granting Plaintiff's second motion for leave to amend (ECF No. 23) and allowing the litigation to proceed against Defendant McKee only. The magistrate judge recommends finding Plaintiff's first motion to amend (ECF No. 18) moot. Plaintiff asserts that he did not intend to abandon any claim against Defendant Guglin through his second motion to amend.

Plaintiff's objection is affirmed. Plaintiff's second motion to amend is not a model of clarity and this Court must read pro se pleadings liberally. The first exhibit to Plaintiff's second motion is titled "Proposed Amended Complaint." (ECF No. 23-1 PageID.214.) The document makes four references to the "attached complaint and exhibits." While Plaintiff attaches seven exhibits, he does not attach any amended complaint. There is no attached document that looks similar to the initial pleading or the proposed complaint in the first motion to amend.

In an abundance of caution, the Court declines to adopt this portion of the R&R. This lawsuit is still in the early stages of litigation. Defendant McKee will be added to the lawsuit and will need to be served. Defendant Guglin has not yet been served. Plaintiff

would certainly be prejudiced were he not able to pursue a claim against Guglin when she has not yet been brought into the lawsuit.

Objection 3. The Court agrees with the well-supported recommendations of the magistrate judge that, on the record presented thus far, Plaintiff is not entitled to a preliminary injunction. Plaintiff's motion for a preliminary injunction (ECF No. 19) will be denied.

Consistent with this Order,

1. The Report and Recommendation (ECF No. 32) **ADOPTED IN PART** as the Opinion of this Court.
2. Plaintiff's motions to amend or correct (ECF Nos. 18 and 23) are **GRANTED**. Going forward, the controlling pleading will be Plaintiff's Proposed Amended Complaint found in ECF No. 18 PageID.167-70. Because Plaintiff has conceded that he has no claim against Defendant Finco, Finco is **DISMISSED WITH PREJUDICE**.
3. Defendants' motion for summary judgment (ECF No. 16) is **GRANTED** and Defendants Rink and Leach are dismissed without prejudice.
4. Plaintiff's motion for a preliminary injunction (ECF No. 19) is **DENIED**.
5. Defendants McKee and Guglin must be served with a copy of the summons and complaint.

IT IS SO ORDERED.

Date: February 26, 2019

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge