

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Lowell N. Payne, :
 :
 Plaintiff : Civil Action 2:13-cv-01172
 :
 v. : Judge Smith
 :
 Cathy Pummill, *et al.*, : Magistrate Judge Abel
 :
 Defendants :

Report and Recommendation

This matter is before the Magistrate Judge on plaintiff's December 20, 2013 motion for default judgment and for summary judgment (doc. 14).

Plaintiff argues that there is no genuine dispute as to any material fact and that he is entitled to judgment as a matter of law. Plaintiff maintains that defendants Robinson, Cunningham, Hamilton, Pummill and Park acted personally without state authority. Plaintiff also argues that defendants have failed to plead or otherwise defend this action and seek an order entering default judgment.

As required by 28 U.S.C. §1915A(a) and (b) and 42 U.S.C. §1997e(c), the Magistrate Judge issued an Initial Screening Report and Recommendation, which stated that defendants were not required to answer the complaint unless later ordered to do so by the Court. Defendants have not been ordered to file an answer or other responsive pleading thus far. As a result, defendants are not in default.

For the reasons stated above, the Magistrate Judge RECOMMENDS that plaintiff's December 20, 2013 motion for default judgment and for summary judgment (doc. 14) be DENIED.

If any party objects to this Report and Recommendation, that party may, within fourteen (14) days, file and serve on all parties a motion for reconsideration by the Court, specifically designating this Report and Recommendation, and the part thereof in question, as well as the basis for objection thereto. 28 U.S.C. §636(b)(1)(B); Rule 72(b), Fed. R. Civ. P.

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to *de novo* review by the District Judge and waiver of the right to appeal the judgment of the District Court. *Thomas v. Arn*, 474 U.S. 140, 150-152 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981); *United States v. Sullivan*, 431 F.3d 976, 984 (6th Cir. 2005); *Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995). Even when timely objections are filed, appellate review of issues not raised in those objections is waived. *Willis v. Sullivan*, 931 F.2d 390, 401 (6th Cir. 1991).

s/Mark R. Abel
United States Magistrate Judge