

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

ROY A. DURHAM, JR.,

Plaintiff,

v.

**Civil Action 2:14-cv-581
Judge Algenon L. Marbley
Magistrate Judge Jolson**

GARY C MOHR, et al.,

Defendants.

REPORT AND RECOMMENDATION

On August 31, 2016, Defendants filed a motion for summary judgment, together with a supporting memorandum of law. (Doc. 100). Despite the requirement under Local Rule 7.2(a)(2) that a memorandum opposing the motion be filed within 21 days from the date of service of the motion, no such memorandum was filed. On October 11, 2016, Plaintiff was ordered to file an opposing memorandum within fourteen days of the Court's order. (Doc. 107 at 1) The Court warned Plaintiff that "[f]ailure to do so may result either in the motion being treated as unopposed, or in dismissal of this action for failure to prosecute." (*Id.*).

Twenty days have passed since the Court issued its order, and Plaintiff has not filed an opposing memorandum or sought an extension of time in order to do so. Thus, it appears that Plaintiff no longer intends to pursue a claim under 42 U.S.C. § 1983. The Court may dismiss an action for failure to prosecute under its inherent power to control its docket, *see Link v. Wabash R.R. Co.*, 370 U.S. 626, 629 (1962), or under Rule 41(b) of the Federal Rules of Civil Procedure. Based upon the foregoing, the Court RECOMMENDS that this action be dismissed.

Procedure on Objections to Report and Recommendation

If any party objects to this Report and Recommendation, that party may, within fourteen (14) days of the date of this Report, file and serve on all parties written objections to those specific proposed findings or recommendations to which objection is made, together with supporting authority for the objection(s). A Judge of this Court shall make a *de novo* determination of those portions of the Report or specified proposed findings or recommendations to which objection is made. Upon proper objections, a Judge of this Court may accept, reject, or modify, in whole or in part, the findings or recommendations made herein, may receive further evidence or may recommit this matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to have the District Judge review the Report and Recommendation *de novo*, and also operates as a waiver of the right to appeal the decision of the District Court adopting the Report and Recommendation. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

IT IS SO ORDERED.

Date: October 31, 2016

/s/ Kimberly A. Jolson
KIMBERLY A. JOLSON
UNITED STATES MAGISTRATE JUDGE