

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Mitchell Sumpter,)	C/A No. 8:14-180-JFA-JDA
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
A. Lane Cribb, et al.,)	
)	
Defendants.)	
_____)	

The *pro se* plaintiff, Mitchell Sumpter, brings this action pursuant to 42 U.S.C. § 1983 alleging various violations of his constitutional rights with regard to his conditions of confinement. He contends that black mold infestation at the Georgetown County Detention Center (GCDC) where he is housed threatens his health, and that the defendants have been deliberately indifferent to his serious medical needs.

Now before the court is plaintiff's motion for a temporary restraining order (TRO) wherein plaintiff claims that he is being threatened, harassed, and physically abused by the defendants.

The Magistrate Judge assigned to this action¹ has prepared a Report and Recommendation and opines that the plaintiff's motion for a TRO should be denied. The

¹ The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. See 28 U.S.C. § 636(b)(1).

Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

The plaintiff was advised of his right to file objections to the Report and Recommendation which was entered on the docket on July 8, 2014. The plaintiff filed timely objections which this court has reviewed *de novo* and will address herein.

As the Magistrate Judge notes in her Report, to obtain a temporary restraining order (TRO) or preliminary injunction, plaintiff must show that (1) he is likely to succeed on the merits; (2) he is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in his favor; and (4) an injunction is in the public interest. *See Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The Magistrate Judge recommends denial of the plaintiff's motion because the plaintiff has not shown that the *Winter* factors weigh in his favor.

The gist of plaintiff's TRO motion is that he is being threatened, harassed, and physically abused by the defendants. In his objections, plaintiff expresses his disagreement with the Magistrate Judge's order denying plaintiff's motion for physical and mental examinations relating to the black mold allegations of his complaint. As the Magistrate Judge correctly notes, such exams are not within the confines of Fed. R. Civ. P. Rule 35.

The plaintiff also objects to the Magistrate Judge's suggestion that this court deny his motion for default judgment. Plaintiff accuses the court of manipulating a fraud with regard to the defendants' timely answer. This court has reviewed the docket and finds that the denial for default judgment was proper. Perhaps the reason plaintiff did not receive the

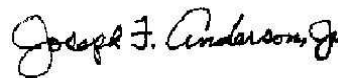
defendants' answer in this case (ECF No. 67) is because it was mailed to him on June 6, 2014 at the J. Rueben Long Detention Center in Conway, South Carolina. The Clerk did not receive plaintiff's notice of change of address back to GCDC (dated June 4, 2014) until June 12, 2014. In any event, the defendants' answers were due on June 6, 2014 (summons were served on April 24, 2014) and were timely filed so that no default occurred.

Finally, plaintiff objects to the Magistrate Judge's recommendation that this court deny his motion for a TRO. The court finds plaintiff's objections are without merit and as such, the objections are overruled.

After carefully reviewing the applicable laws, the case record, the Report and Recommendation, and the objections thereto, this court adopts and incorporates the Magistrate Judge's Report herein by reference. Accordingly, plaintiff's motion for a temporary restraining order (ECF No. 72) is denied.

The Clerk is directed to refer this action back to the Magistrate Judge for further proceedings.

IT IS SO ORDERED.

A handwritten signature in black ink that reads "Joseph F. Anderson, Jr." in a cursive script.

August 1, 2014
Columbia, South Carolina

Joseph F. Anderson, Jr.
United States District Judge