UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT

YETHA IDRISS LUMUMBA,	:
Plaintiff,	:
ν.	:
HAYWOOD MACK, MATTHEW ENGELS, CHAD M. PRESSEY,	:
Defendants.	:

File No. 1:13-cv-158-jgm-jmc

ORDER

The Magistrate Judge's Report and Recommendation was filed September 23, 2013. (Doc. 17.) After <u>de novo</u> review and absent objection, the Report and Recommendation is AFFIRMED, APPROVED and ADOPTED. <u>See</u> 28 U.S.C. § 636(b)(1).

Defendants Engels and Pressey's Motion to Dismiss (Doc. 13) is DENIED as moot, and because they are not identified as parties in the amended complaint (Doc. 15), they shall be terminated as Defendants.

Defendant Mack's Motion to Dismiss (Doc. 6) is GRANTED, insofar as the motion seeks dismissal of Plaintiff's § 1983 and Title 18 claims. The motion is DENIED with respect to Plaintiff's state law claims, and he shall be afforded an opportunity to amend his complaint. If he chooses to file an amended pleading, he shall do so <u>on or</u> <u>before November 29, 2013</u>. The pleading must be entitled "Second Amended Complaint" and include a jurisdictional statement. The Second Amended Complaint will replace all prior complaints, thereby invalidating the original Complaint (Doc. 5) and the

subsequent "Verified Complaint" (Doc. 15). Failure to file a timely Second Amended Complaint, or to allege facts establishing diversity jurisdiction, may result in dismissal of this case without prejudice.

This matter is returned to Magistrate Judge John M. Conroy for further proceedings.

It is further certified that any appeal taken <u>in forma pauperis</u> from this Order would not be taken in good faith because such an appeal would be frivolous. <u>See</u> 28 U.S.C. § 1915(a)(3).

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 5th day of November, 2013.

<u>/s/ J. Garvan Murtha</u> Honorable J. Garvan Murtha United States District Judge