UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JESS RICHARD SMITH,

Plaintiff,

v.

KEITH GOODENOUGH, SCOTT BUTTICE and S. SUNDBERG,

Defendants.

No. 4:17-CV-5060-SMJ

ORDER ADOPTING REPORT AND RECOMMENDATION AND DENYING MOTION FOR TEMPORARY RESTRAINING ORDER/PRELIMINARY INJUNCTION

Before the Court is Magistrate Judge Mary K. Dimke's Report and Recommendation, ECF No. 16, to deny Plaintiff's Motion for Temporary Restraining Order, ECF No. 5. Plaintiff, a prisoner at the Washington State Penitentiary is proceeding *pro se* and *in forma pauperis*; Defendants have not been served. Plaintiff has filed a timely Objection, ECF No. 18.

Magistrate Judge Dimke determined the Court lacked jurisdiction to consider Plaintiff's Motion because he had not yet presented a legally sufficient complaint. ECF No. 16 at 2. Plaintiff appealed the directive to amend or voluntarily dismiss

and his interlocutory appeal was dismissed for lack of jurisdiction on August 17, 2017. ECF No. 24.

In his Objection, Plaintiff contends that Magistrate Judge Dimke exceeded her authority by entertaining his motion. The Court disagrees. Although the power of federal magistrate judges is limited by 28 U.S.C. § 636, a district judge may authorize a magistrate judge to prepare findings and recommendations on dispositive matters. *See* 28 U.S.C. § 636(b)(1); *Estate of Conners v. O'Connor*, 6 F.3d 656, 658 (9th Cir. 1993). That is what was done here. Magistrate Judge Dimke did not issue a dispositive Order. Plaintiff's objection is misplaced.

Next, Plaintiff challenges the directive to amend his complaint. He has unsuccessfully appealed that issue. To the extent Plaintiff is now objecting to a separate Order, he must limit his objections to the content of the Report and Recommendation.

In addition, Plaintiff complains about a failure to "note" his Motion before a District Court. Apparently, he is concerned that, despite the fact he had noted his Motion for hearing on May 30, 2017, it was not considered until July 26, 2017, and then by a magistrate judge. A noted hearing is not a guarantee that a Motion will be resolved by a particular date.

This Court has reviewed Plaintiff's Motion, along with the Report and Recommendation and Plaintiff's objections. Being fully informed, the Court finds

the Magistrate Judge's recommendation is correct. Indeed, Plaintiff concedes his Motion for a Temporary Restraining Order is now moot because he has been released from the Intensive Management Unit. ECF No. 18 at 4.

Accordingly, **IT IS HEREBY ORDERED**:

1. The Report and Recommendation, ECF No. 16, is **ADOPTED IN ITS ENTIRETY.**

2. Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction, ECF No. 5, is **DENIED.**

IT IS SO ORDERED. The Clerk's Office is directed to enter this Order and provide a copy to Plaintiff.

DATED this 14th day of September 2017.

SALVADOR MENDOZA, JR.
United States District Judge