IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF WEST VIRGINIA ELKINS

NEAL BENJAMIN,

Plaintiff,

v.

CIVIL ACTION NO. 2:18-CV-26 (BAILEY)

UNITED STATES OF AMERICA,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before this Court for consideration of the Report and Recommendation of United States Magistrate Judge James P. Mazzone [Doc. 11]. Pursuant to this Court's Local Rules, this action was referred to Magistrate Judge Mazzone for submission of a proposed report and recommendation ("R&R"). Magistrate Judge Mazzone filed his R&R on October 29, 2018, wherein he recommends plaintiff's Complaint [Doc. 1] be dismissed without prejudice. Further, he recommends plaintiff's Motion for Leave to Proceed *in forma pauperis* [Doc. 2] and Motion for Preliminary Injunction [Doc. 9] be denied as moot. Finally, Magistrate Judge Mazzone also recommends plaintiff's Motion Requesting Additions to be Added to Federal Tort Claim [Doc. 7] be denied.

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Mazzone's R&R were due within fourteen (14) days of service, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b). The docket reflects that service was accepted on November 5, 2018 [Doc. 12]. To date, no objections have been filed. Accordingly, this Court will review the R&R for clear error.

Upon careful review of the above, it is the opinion of this Court that the Report and Recommendation **[Doc. 11]** should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Accordingly, this Court **ORDERS** that the plaintiff's Complaint **[Doc. 1]** be **DISMISSED WITHOUT PREJUDICE**. Further, plaintiff's Motion for Leave to Proceed *in forma pauperis* **[Doc. 2]** and plaintiff's Motion for Preliminary Injunction **[Doc. 9]** are **DENIED AS MOOT**. Finally, plaintiff's Motion Requesting Additions to be Added to Federal Tort Claim **[Doc. 7]** is **DENIED**. This Court further **ORDERS** that this matter be **STRICKEN** from the active docket of this Court and **DIRECTS** the Clerk to enter judgment in favor of respondent.

It is so ORDERED.

The Clerk is directed to transmit copies of this Order to any counsel of record herein and to mail a copy to the *pro* se petitioner.

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DATED: November 27, 2018.

19 JOHN PRESTON BAILEY UNITED STATES DISTRICT JUDGE