

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

MATTHEW W. TRIPLETT,

Plaintiff,

v.

**CIVIL ACTION NO.: 3:13-CV-135
(JUDGE GROH)**

**JAMES RUBENSTEIN;
PATRICK MIRANDY; and
JOHN ANDERSON,**

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge James E. Seibert. Pursuant to this Court's Local Rules, this action was referred to Magistrate Judge Seibert for submission of a proposed report and a recommendation ("R&R"). Magistrate Judge Seibert filed his R&R on September 2, 2014. ECF 44. In that filing, he recommends that the Defendants' supplemental motion to dismiss, [ECF 43], be denied in part and granted in part; that Defendant Rubenstein be dismissed from this action; and that a scheduling order be entered.

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). Failure to file timely objections constitutes a waiver of *de novo* review and the


petitioner's 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). Objections to Magistrate Seibert's R&R were originally due within fourteen plus three days of the R&R being entered. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). No objections were filed by either party. Just prior to the original deadline for objections to be filed, the Plaintiff's attorney filed a motion to withdraw as counsel. The Court denied this motion, and extended the deadline for the parties to file objections to the R&R. The second deadline has now passed, and no objections were filed by either party.

Accordingly, this Court will review the R&R for clear error. Upon careful review of the report and recommendation, it is the opinion of this Court that the magistrate judge's Report and Recommendation should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Accordingly, the Court hereby **ORDERS** that the Defendants' supplemental motion to dismiss is **DENIED IN PART** as to Defendants Mirandy and Anderson. The Court further **ORDERS** that the Defendants' supplemental motion to dismiss is **GRANTED IN PART** as to Defendant Rubenstein, and that Defendant Rubenstein be **DISMISSED** from this action.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record herein.

DATED: November 7, 2014


GINA M. GROH
UNITED STATES DISTRICT JUDGE