

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

WILLIAM A. LARUE,

Plaintiff,

v.

CIVIL ACTION NO. 2:08-1214

HUSTLER MAGAZINE, INC.,

Defendant.

MEMORANDUM OPINION AND ORDER

Pending before the court is plaintiff's amended complaint, in which plaintiff states that he "want[s] Hustler to send [him] back issues of their magazine for Oct. 76 thru Jan. 77, either directly or through counsel." (Doc. No. 9 at 5.) Magistrate Judge Mary E. Stanley submitted Proposed Findings and Recommendation ("PF & R") on January 8, 2009, recommending that this court dismiss plaintiff's amended complaint for failure to state a claim upon which relief can be granted, and for lack of jurisdiction. (Doc. No. 10.)

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted ten days, plus three mailing days, in which to file any objections to Magistrate Judge Stanley's PF & R. Under § 636(b), the failure of any party to file objections within the appropriate time frame constitutes a waiver of that party's right to a *de novo* review by this court. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S.

140 (1985). No party has filed objections to the magistrate judge's report, and the time period for doing so has elapsed.*

Having reviewed the Proposed Findings and Recommendation filed by Magistrate Judge Stanley, the court (1) **ADOPTS** the findings and conclusions set forth therein; (2) **DISMISSES** plaintiff's amended complaint **WITH PREJUDICE**; (3) **DENIES** plaintiff's motion for a refund (Doc. No. 11); and (4) **DIRECTS** the Clerk to remove this action from the active docket of this court.

The Clerk is further directed to forward a copy of this Memorandum Opinion and Order to plaintiff and to all counsel of record.

It is **SO ORDERED** this 30th day of March, 2010.

ENTER:

David A. Faber
David A. Faber
Senior United States District Judge

* Plaintiff did, however, file a letter-form motion for a refund of the \$350.00 filing fee he paid to the United States District Court for the Northern District of California, where this suit was originated, explaining simply that this action "was dismissed prior to service of process." (Doc. No. 11.) He provides no authority in support of his motion. Accordingly, the court **DENIES** the motion for a refund.