

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

CHARLESTON DIVISION

ANDREW MILLER,

Plaintiff,

v.

CIVIL ACTION NO. 2:14-cv-16868

DAVID BALLARD, et al.,

Defendants.

ORDER

Pending before this court is a Motion to Dismiss [Docket 21] filed by defendants David Ballard, Jim Rubenstein, David Miller, Russell Matheny, and John Doe. The Motion to Dismiss was referred to the Honorable Dwane L. Tinsley, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B) (2012). On July 14, 2015, the Magistrate Judge submitted findings of fact and a recommendation that the court **DENY without prejudice** the Motion to Dismiss on the grounds that the Magistrate Judge had recently allowed the plaintiff to amend his complaint, (Order (July 14, 2015) [Docket 71]).

Neither party has filed objections to the Magistrate Judge's findings and recommendation. A district court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." § 636(b)(1)(C). The court is not, however, 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). As the parties have not filed objections in this case, the court accepts and incorporates herein the findings and recommendation of the Magistrate Judge and orders judgment consistent with the findings and recommendation. Accordingly, the Motion to Dismiss is **DENIED without prejudice**.

The court **DIRECTS** the Clerk to send a copy of this Order to Magistrate Judge Tinsley, counsel of record, and any unrepresented party.

ENTER: August 3, 2015



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE