IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 17-cv-02938-RBJ-NYW

LEONARD A. MARES,

Plaintiff,

v.

RICK RAEMISCH,
in his official capacity as Executive Director of CDOC,

Defendant.

RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE
AND ORDER

Magistrate Judge Nina Y. Wang

This civil action is before the court on the following motions referred to the undersigned Magistrate Judge:

(1) Plaintiff's Motion for Court Order Visitations, phone calls,[1] and to receive and delivery mail ("Motion for Visitation") [#49, filed October 17, 2018];

(2) Plaintiff's Motion to Grant Plaintiff, Damages, punitive Damages, Exemplary Damages, treble Damages, Etc. ("Motion for Damages") [#54, filed November 19, 2018];

[1] Mr. Mares is proceeding *pro se* in this matter, and accordingly, this court construes his filings liberally without assuming the role of an advocate. *See Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). Consistent with this principle, at times, the court will quote from Mr. Mares's filings without the use of [sic] or the correction of spelling, capitalization, or syntax.

(3) Plaintiff's Motion for Appointment of Counsel ("Motion for Appointment of Counsel") [#57, filed November 30, 2018];

(4) Plaintiff's Motion to Amend Defendant to his Individual Capacity ("Second Motion to Amend")[2] [#61, filed December 3, 2018]; and

(5) Plaintiff's Motion to Notify the courts of Retaliation by defendants ("Notice Motion") [#67 filed December 14, 2018].

These motions were referred to this Magistrate Judge pursuant to the Order Referring Case dated May 23, 2018 [#19] and the memoranda dated October 18, 2018 [#50], November 23, 2018 [#55], December 3, 2018 [#60], December 4, 2018 [#62], and December 17, 2018 [#68].

Defendant construes the Motion for Visitation as a motion for preliminary injunction, and responded on November 15, 2018 [#53], to which Mr. Mares filed no reply. In response to this court's order dated December 17, 2018 [#69], Defendant filed a consolidated response ("Consolidated Response") on January 4, 2019 to the Motion for Damages, Motion for Appointment of Counsel, Second Motion to Amend, and Notice Motion. [#76]. Because of the number and frequency of Plaintiff's filings, this court finds that it is appropriate to proceed with this Recommendation without further reply by Plaintiff. D.C.COLO.LCivR 7.1(d).

BACKGROUND

Plaintiff Leonard A. Mares ("Plaintiff" or "Mr. Mares") is in the custody of the Colorado Department of Corrections ("CDOC") and initiated this action on December 6, 2017 while an inmate Crowley Correction Facility [#1 at 3] but is currently incarcerated at the Buena Vista

[2] Plaintiff filed a Motion to Amend Defendants for Retaliation [#39] on September 6, 2018, which is subject to a Recommendation [#42] and is pending before the presiding judge, the Honorable R. Brooke Jackson.

Correctional Facility ("BVCF").[3] [#36]. On December 11, 2017, the court granted Plaintiff leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. [#5]. Incident to the initial screening required under section 1915 and D.C.COLO.LCivR 8.1, the court ordered Plaintiff to amend his pleading, which he did on January 5, 2018 [#7], April 10, 2018 [#15], and May 17, 2018, [#17], when he filed the operative pleading, the Third Amended Complaint, asserting claims against Mrs. Baurran; Mr. Bradshaw, Rick Raemisch, and Mrs. Mary Carlson. [*Id.*]. Mr. Mares sued these defendants in their individual and official capacities. [*Id.*].

On May 22, 2018, the Honorable Lewis T. Babcock issued an Order to Draw in Part and to Assign in Part [#18], dismissing all damages against defendants in their official capacities and certain causes of action, leaving Ms. Baurran as the sole defendant to Claim 1 which alleges that Defendant Baurran violated Plaintiff's constitutional rights because she has wrongfully denied Mr. Mares telephone access to his minor daughter. [*Id.* at 9]. Mr. Mares has previously filed a civil action based on similar allegations against various defendants, including Rick Raemisch, covering the time when he was incarcerated at Bent County Correctional Facility and continuing through his transfer to Fremont Correctional Facility. *See Mares v. Raemisch*, Civil Action No. 16-cv-615-RBJ-NYW (D. Colo.). Attempts to identify and serve Ms. Baurran were unsuccessful. [#22]. Because Mr. Mares proceeds *pro se*, this court liberally construed the remaining claim, to include an official capacity claim for prospective injunctive relief against Ms. Baurran and directed that the Colorado Attorney General's Office be served. [#29]. Implicitly, an individual capacity claim against Ms. Baurran could not proceed because she could not be identified or served.

[3] Mr. Mares has also been incarcerated at Rifle Correctional Facility during this action. [#15 at 22].

Service as to the Attorney General's Office was accomplished as of October 16, 2018. [#45]. The Attorney General's Office then moved to substitute the Executive Director of the CDOC, Rick Raemisch, in his official capacity, as Defendant ("Defendant Raemisch"). [#46]. After the time for Mr. Mares to object passed without objection [#48], the court granted the motion, substituting Ms. Baurran with Defendant Raemisch. [#51]. After waiving service and an extension of time, Defendant Raemisch moved to dismiss the Third Amended Complaint on January 4, 2019 [#78]. But beginning in October 2018 and continuing to the present, Plaintiff has filed successive motions seeking various relief including but not limited to access (telephonic and visitation) to his minor daughter and relief related to his treatment while incarcerated that he characterizes as "retaliation." Five of these motions are considered herein.[4]

ANALYSIS

I. Motion for Visitation

Some of Mr. Mares's motions are duplicative of the substantive allegations and requested relief in the Third Amended Complaint which alleges that prison officials have prevented him from

[4] Mr. Mares has continued to file additional motions, including a Motion for Preliminary Injunction [#58, filed November 30, 2018] to which a response is due no later than January 18, 2019; Motion to File Summary Judgment in the Plaintiffs Favor [#74, filed December 24, 2018] to which a response is due no later than January 14, 2019; a third Motion for Leave to File an Amended Complaint [#83, filed January 7, 2019]; and Motion to Notify the Courts that defendants Failed to Address the Court's order for Plaintiff to attend January 7th 2019 phone conference [#84, filed January 7, 2019]. In addition, both Parties failed to attend the January 7 Status Conference, precipitating an Order to Show Cause that requires both Parties to clarify certain issues, i.e., (1) whether there is a CDOC order, policy, or "list" that prohibits Plaintiff from visitation (personal or telephonic) with his minor daughter or whether the determination not to permit Mr. Mares visitation with his minor daughter has been made on a facility by facility basis, and (2) whether CDOC staff are receiving court orders requiring Mr. Mares to participate in Status Conferences with the court and what steps are such staff taking to facilitate participation in compliance with court orders. Responses to the Order to Show Cause are due no later than January 18, 2019.

contacting his daughter during his incarceration and requests injunctive relief and $1,000 for each day of denied contact as compensation. [#17 at 5, 6, 16]. As an initial matter, the only claim proceeding at this juncture is an official capacity claim against Defendant Raemisch for injunctive relief. No monetary damages are permitted against state actors sued in their official capacity, and accordingly, Judge Babcock dismissed any claims for monetary damages against any defendant sued in his or her official capacity. [#18].

Because Mr. Mares sought same relief in the Visitations Motion as he ultimately seeks from the remaining claim for prospective injunctive relief against Defendant Raemisch in his official capacity, Defendant construed the Visitation Motion as a motion for preliminary injunction. [#53]. Accordingly, this court utilizes that framework, *see Hicks v. Jones*, 332 F. App'x 505, 508 (10th Cir. June 17, 2009) ("A preliminary injunction is ... appropriate to grant intermediate relief of the same character as that which may be granted finally."). Rule 65 of the Federal Rules of Civil Procedure authorizes the court to enter preliminary injunctions. Fed. R. Civ. P. 65(a). A preliminary injunction is considered an extraordinary remedy. *See, e.g., Winter v. Nat'l Res. Defense Council, Inc.*, 555 U.S. 7, 24 (2008). Thus, the right to such relief must be "clear and unequivocal." *Petrella v. Brownback*, 787 F.3d 1242, 1256 (10th Cir. 2015) (quoting *Beltronics USA, Inc. v. Midwest Inventory Distrib., LLC*, 562 F.3d 1067, 1070 (10th Cir. 2009)). A party seeking preliminary injunctive relief must satisfy four factors: a likelihood of success on the merits; a likelihood that the movant will suffer irreparable harm in the absence of preliminary relief; that the balance of equities tips in the movant's favor; and that the injunction is in the public interest. *Id*. at 1257. It is the movant's burden to establish each of these factors. *Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1188–89 (10th Cir. 2003) (citation omitted).

The primary goal of a preliminary injunction is to preserve the pre-trial status quo. "Status quo" is defined to be the last uncontested status between the parties that preceded the controversy until the outcome of the final hearing. *See Schrier v. University of Colorado*, 427 F.3d 1253, 1260 (10th Cir. 2005). Therefore, courts view the following types of injunctions with caution: (1) preliminary injunctions that alter the status quo; (2) preliminary injunctions that require the nonmoving party to take affirmative action ("mandatory preliminary injunctions"); and (3) preliminary injunctions that give the movant all the relief it would be entitled to if it prevailed in a full trial. *RoDa Drilling Co. v. Siegal*, 552 F.3d 1203, 1208 (10th Cir. 2009) (citing *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 389 F.3d 973, 975 (10th Cir. 2004) (per curiam), *aff'd,* 546 U.S. 418 (2006)). Movants who seek a disfavored injunction must demonstrate a *substantial* likelihood of success on the merits, as well as a heightened showing of the other three elements. *Id.* (citing *O Centro*, 389 F.3d at 980); *see also Fundamentalist Church of Jesus Christ of Latter–Day Saints v. Horne*, 698 F.3d 1295, 1301 (10th Cir. 2012) (the movant must show that the factors "weigh heavily and compellingly" in his or her favor). The court may grant a disfavored injunction only if the moving party demonstrates that the "exigencies of the case require extraordinary interim relief," and satisfies the heightened burden. *RoDa Drilling*, 552 F.3d at 1209 (citing *O Centro*, 389 F.3d at 978). "The determination of whether an injunction is mandatory as opposed to prohibitory can be vexing," but the United States Court of Appeals for the Tenth Circuit ("Tenth Circuit") has explained that a mandatory injunction affirmatively requires the non-moving party to act in a particular way. *Schrier*, 427 F.3d at 1261. Whether to issue a preliminary injunction lies in the sound discretion of the trial court. *See id.* at 1208 (citations omitted). Here, this court finds that Plaintiff seeks a mandatory injunction seeking to alter the status quo.

Plaintiff alleges that Defendant violates the First, Eighth, and Fourteenth Amendments by prohibiting him from having contact with his minor daughter. [#17 at 5-6]. Though the First Amendment's guarantee of freedom of speech provides protection to an inmate from censorship of his incoming or outgoing mail, *see Turner v. Safley*, 482 U.S. 78, 89 (1987), and the Fourteenth Amendment extends a protected liberty interest to parents in the care, custody and control of their children, *see Lehr v. Robertson*, 463 U.S. 248, 258, 103 S.Ct. 2985, 77 L.Ed.2d 614 (1983), these rights are not unfettered, particularly in the context of incarcerated individuals. Legitimate governmental interests in the order and security of penal institutions justifies the imposition of certain restraints on inmate correspondence or visitation. *Turner*, 482 U.S. at 89; *Overton v. Bazzetta*, 539 U.S. 126, 131 (2003) (observing that freedom of association may be curtailed based on legitimate penological interests).[5] And even outside the context of incarceration, the determination of whether the familial right of association has been violated requires the court to weigh the individual's interests against the relevant state interests. *Griffin v. Strong*, 983 F.2d 1544, 1548 (10th Cir. 1993).

In his Motion for Visitation, Mr. Mares does not address any of the elements of any of his constitutional claims. [#49]. Indeed, there are basic issues of material fact which remain unresolved; specifically, whether there is a CDOC order, policy, or "list" that prohibits Plaintiff from visitation (personal or telephonic) with his minor daughter, or whether the determination not to permit Mr. Mares visitation with his minor daughter has been made on a facility-by-facility

[5] It is not entirely clear what theory of Eighth Amendment violation Mr. Mares is pursuing. To the extent that Mr. Mares is arguing that restriction on his contact with his minor amounts to cruel and unusual punishment under the Eighth Amendment, consideration of such arguments are better suited under the rubrics of First and Fourteenth Amendments.

basis.[6] Nor is there any evidence in the record to support Mr. Mares's assertion that any restraining or protection order as to his contact with his daughter has been vacated, to establish that any prohibition against contact with his daughter is unjustified. Rather, he simply (albeit vigorously) contends that he has been deprived access to his daughter. To prevail, Mr. Mares must satisfy the same procedural and substantive requirements as a represented party. *Murray v. City of Tahlequah, Okla.* 312 F.3d 1196, 1199 n.2 (10th Cir. 2008) (observing that a party's pro se status does not relieve him of the obligation to comply with procedural rules) (citation omitted); *Dodson v. Bd. of Cty. Comm'rs*, 878 F. Supp. 2d 1227, 1236 (D. Colo. 2012). While the court interprets Mr. Mares's Motion for Visitation liberally, it cannot not act as Mr. Mares's advocate. *Yang v. Archuleta*, 525 F.3d 925, 927 n.1 (10th Cir. 2008). Because Mr. Mares fails to establish that a likelihood of success on the merits of any of his three constitutional claims, let alone establish a substantial likelihood of success, this court respectfully RECOMMENDS that the Motion for Visitation be DENIED.[7]

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[6] Mr. Mares acknowledges that he was granted visitation his minor daughter at Fremont Correctional Facility, which was subject to his prior action, *Mares v. Raemisch*, Case No. 16-cv-615-RBJ-NYW. [#49 at 2].

[7] The court notes that the outcome would be the same if the motion was construed as one for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure as opposed to one for a preliminary injunction. A party is entitled to summary judgment if "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). "At the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 249 (1986); *see also Roberts v. Jackson Hole Mountain Resort Corp*., 884 F.3d 967, 972 (10th Cir. 2018) ("Summary judgment is inappropriate where there is a genuine dispute over a material fact, that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. (citation and quotation marks omitted)). There is no issue for trial unless there is sufficient evidence favoring the non-moving party for a jury to return a verdict for that party. *Anderson*, 477 U.S. at 249. Applying this standard, summary judgment is

II. Motion for Damages and Second Motion to Amend

In his Motion for Damages, Mr. Mares seeks "$10,000 a day for each day that Mr. Raemisch kept Mr. Mares from talking, visiting, mail from his daughter." [#54 at 2]. As discussed above, there is no individual capacity claim against Defendant Raemisch, and Judge Babcock dismissed all claims that sought monetary damages against any defendant in his or her official capacity under the Eleventh Amendment. [#18 at 9]. Accordingly, this court, as Defendant Raemisch suggests, construes this Motion for Damages as a Motion to Amend. In addition, Mr. Mares has filed a Second Motion to Amend to add a claim against Defendant Raemisch in his individual capacity in addition to the current claim asserted against Defendant Raemisch in his official capacity. [#61]. Mr. Mares seeks such amendment to ensure "Mr. Raemisch will take full responsibility in this claim and that the Jury in this case [would have] no conflict to grant Mr. Mares his claim." [*Id.* at 1].

Due to the issues related to service in this action, this court has yet to set a Status Conference to set deadlines in this case. Accordingly, there is no operative deadline for the amendment of pleadings and joinder of parties, and therefore, Mr. Mares's Motion for Damages [#54] and Second Motion to Amend [#61] are considered pursuant to Rule 15(a) of the Federal Rules of Civil Procedure.

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not appropriate at this juncture because, as discussed in more detail above, there are basic factual questions at issue. Indeed, Mr. Mares does not argue that there is no issue of material fact, instead summarily claims that the evidence provided thus far is sufficient to establish Defendant's liability. [#54 at 1; #74 at 1, 2]. Conclusory allegations, without more, are insufficient to justify summary judgment in his favor. *See Wise v. Bravo*, 666 F.2d 1328,1333 (10th Cir. 1981).

Rule 15(a) provides that leave to amend "shall be freely given when justice so requires." Fed. R. Civ. P. 15(a). The court may refuse leave to amend upon a showing of undue delay, undue prejudice to the opposing party, bad faith or dilatory motive, failure to cure deficiencies by amendments previously allowed, or futility of amendment. *Minter v. Prime Equip. Co.*, 451 F.3d 1196, 1204 (10th Cir. 2006). A proposed amendment is futile if the complaint, as amended, would be subject to dismissal. *Bradley v. Val-Mejias*, 379 F.3d 892, 901 (10th Cir. 2004). In considering whether an amendment is futile, courts apply the same standard used to evaluate a claim under Rule 12(b)(6), accepting well-pleaded facts as true and reviewing solely to determine if the Complaint states a plausible claim for relief as amended. *Weingarden v. Rainstorm, Inc.*, No. 09-2530-JWL, 2012 WL 13026753, at *1 (D. Kan. July 12, 2012).

Amendment to add a claim for monetary damages against Defendant Raemisch in his official capacity is futile. As thoroughly explained by the Order Drawing Case, the Eleventh Amendment bars official-capacity claims for damages. [#18 at 3-4]. Therefore, any such amendment would fail as a matter of law. Amendment to add a claim against Defendant Raemisch in his individual capacity is also not justified at this time based on the record before the court. Personal liability under § 1983 must be based on the individual's personal participation in the underlying violation. *Brown v. Montoya*, 662 F.3d 1152, 1163 (10th Cir. 2011). The Order to Draw already considered the allegations insufficient to sustain an individual capacity claim against Defendant Raemisch [#18 at 6-7] ("Plaintiff's allegations that Defendant Raemisch ignored or rejected Plaintiff's written grievances and complaints concerning contact with his minor daughter are insufficient to meet the personal participation requirement."), and the Second Motion to Amend

does not propose to include any additional factual allegations regarding Defendant Raemisch's individual participation.

Therefore, this court respectfully **RECOMMENDS** that the Motion for Damages [#54] and the Second Motion to Amend [#61] be **DENIED**.

III. Motion for Appointment of Counsel

Mr. Mares seeks appointment of counsel on the basis that he is unable to afford counsel and imprisoned, which limits his ability to represent himself. [#57]. The determination of whether to appoint counsel in a civil case is left to the sound discretion of the trial court. *Rucks v. Boergermann*, 57 F.3d 978, 979 (10th Cir. 1995). In deciding whether to request counsel for a civil litigant, the district court should evaluate "the merits of a [litigant's] claims, the nature and complexity of the factual issues, and the [litigant's] ability to investigate the facts and present his claims." *Hill v. Smithkline Beecham Corp.*, 393 F.3d 1111, 1115 (10th Cir. 2004) (citations omitted)

In the Order dated June 29, 2018, this court considered and denied the same motion because the legal issues in this case were not uniquely complex. [#27 at 6]. Mr. Mares makes no argument to support a contrary conclusion. This case remains relatively straightforward and is unlikely to require significant discovery. Mr. Mares has not come forward with any evidence to support his assertion that the protection order as to his daughter was vacated or otherwise is not in force. In addition, given Mr. Mares's conduct described below in the section discussing a filing restriction, this court is hesitant to allocating scarce resources to appoint counsel when it appears that Mr. Mares is not incorporating the court's prior orders into his various filings. Therefore, Plaintiff's Motion for Appointment of Counsel [#57] is **DENIED**.

V. Notice Motion

In his Notice Motion, Mr. Mares brings to the court's attention a dispute between himself and several prison staff members. [#67]. Mr. Mares states that the officers went through his materials in his cell and wrote up Mr. Mares for absence from a prison meeting. The Motion does not concern conduct by the sole Defendant in this case and does not have any nexus to the conduct at issue; rather, this is a simple and unrelated dispute between Mr. Mares and prison staff. Mr. Mares concludes the Motion by stating that he is "[a]sking for [a] preliminary injunction please." Plaintiff, however, does not specify what he seeks to enjoin these non-parties from doing.

Defendant Raemisch's Consolidated Response considered the Notice Motion under the rubric of a preliminary injunction. [#76 at 5-9]. As discussed above, a preliminary injunction is generally related to maintaining the status quo or obtaining the ultimate relief sought by the underlying action. *See supra*. The nature of relief sought by the preliminary injunction generally must be of the same character as the ultimate relief sought by the civil action. *De Beers Consol. Mines v. United States*, 325 U.S. 212, 220 (1945). "When the movant seeks intermediate relief beyond the claims in the complaint, the court is powerless to enter a preliminary injunction." *Gorton v. Williams*, No. CIV-07-1165-F, 2008 WL 3835635, at *2 (W.D. Okla. Aug. 12, 2008), aff'd on other grounds, 309 F. App'x 274 (10th Cir. 2009). Here, Plaintiff seeks relief beyond the scope of his operative Third Amended Complaint, and Plaintiff has failed to identify a basis for this court to enter such a preliminary injunction in this matter. And to the extent that Mr. Mares is attempting to amend to include a claim for retaliation in this action, this court has previously recommended that such amendment not be permitted due to the distinct nature of these allegations. [#42 at 5–6].

Nevertheless, even if the court was to consider the substance of Plaintiff's Notice Motion, Mr. Mares has failed to establish his entitled to the extraordinary remedy of a preliminary injunction. It is true that prison officials may not retaliate against or harass an inmate in retaliation for the inmate's exercise of his constitutional rights. *See Baughman v. Saffle*, 24 F. App'x 845, 848 (10th Cir. 2001) (citing *Smith v. Maschner*, 899 F.2d 940, 947 (10th Cir.1990)). This includes actions taken in retaliation that may otherwise be permissible. *Id.* But a prisoner must establish that the challenged actions would not have occurred "but for" a retaliatory motive. *Id.* Applying the standards for a preliminary injunction as articulated above to the record before it, this court finds that Mr. Mares has not met his burden in establishing either a likelihood of success on the merits of a retaliation claim or irreparable harm.

Accordingly, this court respectfully RECOMMENDS that the Motion to Notify the courts of Retaliation by defendants [#67] be **DENIED**.

VI. Filing Restriction

Given the litigation history of Mr. Mares and the number, frequency, and breadth of his various filings, this court also respectfully recommends that Mr. Mares be placed on a filing restriction. While the court recognizes Mr. Mares has significant concerns, many of his arguments have been previously addressed by the court in this action or his previous civil litigation. For example, this court set forth the legal standards for preliminary injunctions in Mr. Mares's prior case, *see Mares v. Raemisch*, Civil Action No. 16cv-615-RBJ-NYW, Doc. No. 68, yet Mr. Mares still fails to address the legal elements required for a preliminary injunction in his various motion in this action. Similarly, Judge Babcock explained in the Order Drawing Case that damages could not lie against individuals sued in their official capacities and that his allegations were insufficient

to establish an individual capacity claim against Defendant Raemisch [#18 at 9], but Mr. Mares continues to attempt to recover damages against Defendant Raemisch in his official capacity or amend the Third Amended Complaint to include an individual capacity claim against Defendant Raemisch without any additional factual allegations and without regard to Judge Babcock's order. And though Defendant has long argued that Mr. Mares has not provided any evidence or information to allow the court to conclude that the original protective order prohibiting contact with his daughter was vacated, Mr. Mares has continued to seek the extraordinary relief of a preliminary injunction without offering evidence or a significant legal basis. *See e.g.* [#53 at 4].

Under this filing restriction, Mr. Mares would be precluded from filing any further motions or papers with the court, except for his response to Defendant's Motion to Dismiss and any Objection to this Recommendation, until Judge Jackson resolves the pending Recommendations. The one exception to this restriction would be motions addressing issues of serious bodily harm, which Mr. Mares would be allowed to file with leave of court. Mr. Mares is advised when considering whether to file motions raising issues of serious bodily harm that Fed. R. Civ. P. 11(b) states that an unrepresented party, by signing its pleadings, motions, and other papers, makes certain representations to the court about the truthfulness and non-frivolousness of its filings. A failure to meet the standard set out in Fed. R. Civ. P. 11 could subject a party to sanctions, including nonmonetary directives or an order to pay attorney's fees and costs and/or dismiss the case.

CONCLUSION

IT IS RESPECTFULLY RECOMMENDED that:

(1) Plaintiff's Motion for Court Order Visitations, phone calls, and to receive and delivery mail [#49, filed October 17, 2018] **be DENIED**;

(2) Plaintiff's Motion to Grant Plaintiff, Damages, punitive Damages, Exemplary Damages, treble Damages, Etc. [#54, filed November 19, 2018] **be DENIED**;

(3) Motion to Amend Defendant to his Individual Capacity [#61, filed December 3, 2018] be **DENIED**;

(4) The Motion to Notify the courts of Retaliation by defendants [#67, filed December 14, 2018] be **DENIED**; and

(5) The court impose a filing restriction as described above.[8]

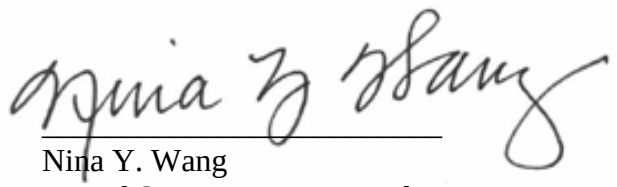
[8] Within fourteen days after service of a copy of the Recommendation, any party may serve and file written objections to the Magistrate Judge's proposed findings and recommendations with the Clerk of the United States District Court for the District of Colorado. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *In re Griego*, 64 F.3d 580, 583 (10th Cir. 1995). A general objection that does not put the District Court on notice of the basis for the objection will not preserve the objection for de novo review. "[A] party's objections to the magistrate judge's report and recommendation must be both timely and specific to preserve an issue for de novo review by the district court or for appellate review." *United States v. 2121 E. 30th Street*, 73 F.3d 1057, 1060 (10th Cir. 1996). Failure to make timely objections may bar de novo review by the District Judge of the Magistrate Judge's proposed findings and recommendations and will result in a waiver of the right to appeal from a judgment of the district court based on the proposed findings and recommendations of the magistrate judge. *See Vega v. Suthers*, 195 F.3d 573, 579-80 (10th Cir. 1999) (District Court's decision to review a Magistrate Judge's recommendation de novo despite the lack of an objection does not preclude application of the "firm waiver rule"*); Int'l Surplus Lines Ins. Co. v. Wyo. Coal Ref. Sys., Inc.*, 52 F.3d 901, 904 (10th Cir. 1995) (by failing to object to certain portions of the Magistrate Judge's order, cross-claimant had waived its right to appeal those portions of the ruling); *Ayala v. United States*, 980 F.2d 1342, 1352 (10th Cir. 1992) (by their failure to file objections, plaintiffs waived their right to appeal the Magistrate Judge's ruling). *But see Morales-Fernandez v. INS*, 418 F.3d 1116, 1122 (10th Cir. 2005) (firm waiver rule does not apply when the interests of justice require review).

Additionally, **IT IS ORDERED** that:

(1) The Motion for Appointment of Counsel [#57, filed November 30, 2018] is **DENIED.**

DATED: January 10, 2019

BY THE COURT:



Nina Y. Wang
United States Magistrate Judge