

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

WAYNE McELWAIN,

Plaintiff,

v.

CASE NO. 4:11cv393-MP-CAS

JAMES COKER and
CAPTAIN ABEL,

Defendants.

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ORDER

This cause comes on for consideration upon the magistrate judge's Report and Recommendation dated July 19, 2012. (Doc. 34). The parties have been furnished a copy of the Report and Recommendation and have been afforded an opportunity to file objections pursuant to Title 28, United States Code, Section 636(b)(1). I have made a *de novo* determination of any timely filed objections.

Having considered the Report and Recommendation, and any objections thereto timely filed, I have determined that the Report and Recommendation should be adopted.

Accordingly, it is now ORDERED as follows:

1. The court's previous order adopting the magistrate judge's Report and Recommendation (doc. 37) and the Clerk's judgment (doc. 38) are VACATED.¹
2. The magistrate judge's Report and Recommendation is adopted and incorporated by reference in this order.
3. Defendants' motion to dismiss (doc. 26) is GRANTED and plaintiff's amended complaint (doc. 7) is DISMISSED as abuse of the judicial process for failing to disclose

¹ The court previously granted plaintiff's motion for extension of time to file objections to the magistrate judge's Report and Recommendation and extended the deadline to August 29, 2012. Plaintiff's timely objections were provided to Century Correctional Institution on August 27, 2012, but not received by the court until August 4, 2012. Thus, the court has reviewed plaintiff's timely filed objections *de novo* and entered a new order adopting the magistrate judge's Report and Recommendation.

prior cases, and because the complaint fails to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2).

4. The Clerk is directed to note on the docket that this cause was dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(i),(ii), and that plaintiff has three strikes under 28 U.S.C. § 1915(g).

DONE and ORDERED this 17th day of September, 2012.

s/ *M. Casey Rodgers*
M. CASEY RODGERS
CHIEF UNITED STATES DISTRICT JUDGE