N. SMITH, Nurse Administrator, Upstate Correctional Facility,

Defendant.

THOMAS J. McAVOY Senior United States District Judge

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DECISION and ORDER

9:10-CV-0734

This matter brought pursuant to 42 U.S.C. § 1983 was referred to the Hon. David E. Peebles, United States Magistrate Judge, for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rules 72.3 (c).

No objections to the August 19, 2011 Report-Recommendation have been raised. After examining the record, the Court determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice. Accordingly, the Court adopted the Report-Recommendation for the reasons stated therein.

It is, therefore, ORDERED, that Defendant's motion to dismiss Plaintiff's amended complaint GRANTED without prejudice to refiling of an amended complaint within thirty days. In the event Plaintiff fails to file an amended complaint within thirty days, this action will be dismissed without further action by the Court.

IT IS SO ORDERED.

Dated: September 21, 2011

Thomas J. Mo Chron

Senior, U.S. District Judge