

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

EDWIN STANCIK,	)	
	)	
Plaintiff,	)	
	)	
v.	)	1:09CV488
	)	
SECRETARY OF HEALTH AND HUMAN	)	
SERVICES and ERIC HOLDER, U.S.	)	
Attorney General,	)	
	)	
Defendant.	)	

**ORDER**

This matter is before this court for review of the Memorandum Opinion and Recommendation ("Recommendation") filed on September 24, 2012, by the Magistrate Judge in accordance with 28 U.S.C. § 636(b). (Doc. 19.) In the Recommendation, the Magistrate Judge recommends that this action as to Defendant Eric Holder be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 4(m) and that Defendant Secretary of Health and Human Services' motion for judgment on the pleadings (Doc. 6) be granted and this action be dismissed. The Recommendation was served on the parties to this action on September 24, 2012. Plaintiff filed timely objections (Doc. 21) to the Recommendation and Defendant Secretary of Health and

Human Services filed a response to Plaintiff's objections.  
(Doc. 22).<sup>1</sup>

This court is required to "make a de novo determination of those portions of the [Magistrate Judge's] report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). This court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the [M]agistrate [J]udge. . . . [O]r recommit the matter to the [M]agistrate [J]udge with instructions." Id.

This court has appropriately reviewed the portions of the Recommendation to which objection was made and has made a de novo determination which is in accord with the Magistrate Judge's Recommendation. This court therefore adopts the Recommendation.

**IT IS THEREFORE ORDERED** that the Magistrate Judge's Recommendation (Doc. 19) is **ADOPTED**. **IT IS FURTHER ORDERED** that, as to Defendant Eric Holder, this action is dismissed

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<sup>1</sup> Plaintiff also filed a reply on March 8, 2013. (Doc. 23). This court notes that replies are not permitted under the Local Rules. See M.D.N.C. R. 72.4 (objections and responses to recommendation or order). However, having reviewed Plaintiff's reply, this court finds that the Recommendation should still be adopted.

without prejudice pursuant to Federal Rule of Civil Procedure 4(m). **IT IS FURTHER ORDERED** that Defendant Secretary of Health and Human Services' motion for judgment on the pleadings (Doc. 6) is **GRANTED** and that this action is dismissed. A Judgment dismissing this action will be entered contemporaneously with this Order.

This the 28th day of March, 2013.

*William L. Ostrow, Jr.*  
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United States District Judge