

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

Johnny Calloway, #272829,)	C.A. No. 1:09-1925-TLW-SVH
)	
Plaintiff,)	
)	
-versus-)	ORDER
)	
Rhonda Abston, Wade Byrd and Officer Jeffrey,)	
)	
Defendants.)	
_____)	

The Plaintiff has brought this *pro se* action against the Defendants under Title 42, United States Code, Section 1983. This matter is now before the undersigned for review of the Report and Recommendation (“the Report”) filed by United States Magistrate Judge Shiva V. Hodges, to whom this case had previously been assigned pursuant to 28 U.S.C. § 636(b) and Local Rule 73.02(B)(2) (D.S.C.). In her Report, Magistrate Judge Hodges recommends that (1) Plaintiff’s Motions for a Temporary Restraining Order be denied as Moot (Docs. # 20 & # 45); (2) Plaintiff’s Motion for Default Judgment be denied (Doc. # 21); (3) Plaintiff’s Motion for Summary Judgment be denied (Doc. # 27) and (4) Defendants’ Motion for Summary Judgment be denied in part and granted in part (Doc. # 37). (Doc. # 56) Specifically, it is recommended that Defendants’ Motion for Summary Judgment be denied as to Plaintiff’s claims of excessive force and conspiracy against Defendants Byrd and Jeffrey under § 1983 and summary judgment be granted on all other claims. Both Plaintiff and Defendants have filed objections to the Report. (Docs. # 58 & # 60).

In conducting this review, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections. . . . The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a de novo determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not 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 Report and Recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case, the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Housing Auth. of the City of Columbia, 791 F.Supp. 137, 138 (D.S.C. 1992) (citations omitted).

In light of this standard, the Court has reviewed, de novo, the Report and the objections thereto. The Court accepts the Report.

THEREFORE, IT IS HEREBY ORDERED that the Magistrate Judge's Report is **ACCEPTED** (Doc. # 56). Furthermore, (1) Plaintiff's Motions for a Temporary Restraining Order are **DENIED** as **MOOT** (Docs. # 20 & # 45); (2) Plaintiff's Motion for Default Judgment is **DENIED** (Doc. # 21); (3) Plaintiff's Motion for Summary Judgment is **DENIED** (Doc. # 27) and (4) Defendants' Motion for Summary Judgment is **DENIED** in part and **GRANTED** in part (Doc. # 37). (Doc. # 56) Specifically, Defendants' Motion for Summary Judgment is **DENIED** as to Plaintiff's claims of excessive force and conspiracy against Defendants Byrd and Jeffrey under §1983 and summary judgment is **GRANTED** on all other claims. Both Plaintiff's and Defendants' objections are **OVERRULED** (Docs. # 58 & # 60).

IT IS SO ORDERED.

s/ Terry L. Wooten
TERRY L. WOOTEN
UNITED STATES DISTRICT JUDGE

September 13, 2010
Florence, South Carolina