

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

Brian Sharp,)	C/A No. 9:09-2402-JFA-BM
)	
Plaintiff,)	
v.)	ORDER
)	
South Carolina Department of Corrections;)	
Leonard Longe, Sargeant; Jerry Alexander,)	
Captain; and Tim Riley, Warden,)	
)	
Defendants.)	
_____)	

This matter is before the court for review of the Magistrate Judge’s Report and Recommendation.¹ The *pro se* plaintiff, Brian Sharp, is an inmate at the Tyger River Correctional Institution. He brings this action pursuant to 42 U.S.C. § 1983 alleging charges of denial of clean drinking water, use of mace, and excessive force.

In his Report and Recommendation, the Magistrate Judge suggests that the complaint against defendant South Carolina Department of Corrections (SCDC) is subject to summary dismissal because the SCDC is immune from suit under the Eleventh Amendment. *Fed. Maritime Comm’n v. S.C. State Ports Auth.*, 535 U.S. 743 (2002).

¹ The Magistrate Judge’s review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b)(1).

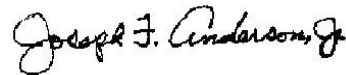
As to the remaining defendants (Longe, Alexander, and Riley), the Magistrate Judge recommends that service of process of the complaint be made as to them. Because the Magistrate Judge fairly and accurately summarizes the facts and standards of law in his Report, such will not be repeated herein.

The plaintiff was advised of his right to file, and did file, objections to the Report and Recommendation, which was entered on the docket on September 17, 2009. However, the plaintiff's objections are without merit.

After carefully reviewing the applicable law, the record in this case, the Report and Recommendation, and the objections thereto, the court agrees with the Magistrate Judge's recommendation and incorporates the Report herein by reference.

Accordingly, defendant SCDC is dismissed without prejudice and without issuance and service of process. The Clerk is directed to serve the remaining defendants.

IT IS SO ORDERED.



Joseph F. Anderson, Jr.
United States District Judge

November 3, 2009
Columbia, South Carolina