

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

Michael A. Gabe,)	
)	
Plaintiff,)	C.A. No.: 1:15-1239-PMD-SVH
)	
v.)	<u>ORDER</u>
)	
Matthew Walker; Sheriff Andy Strickland,)	
Captain Jodie Taylor; David S. Matthews,)	
Colleton County Public Defender; and)	
Colleton County Sheriff’s Office,)	
)	
Defendants.)	
_____)	

This matter is before the Court on the Report and Recommendation (“R&R”) of the Magistrate Judge (ECF No. 13). Following pre-service review pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(d) (D.S.C.), the Magistrate Judge issued the R&R on April 22, 2015, recommending that this Court summarily dismiss, without prejudice and without issuance and service of process, Plaintiff Michael A. Gabe’s (“Plaintiff”) Complaint (ECF No. 1) as to Defendants Colleton County Sheriff’s Office (“CCSO”), David S. Matthews (“Matthews”), and Matthew Walker (“Walker”). By separate order (ECF No. 12), the Magistrate Judge authorized and directed issuance and service of process as to the remaining Defendants. On May 4, 2015, Plaintiff timely filed Objections to the R&R (ECF No. 18).

DISCUSSION

By way of the instant R&R,¹ the Magistrate Judge recommends summarily dismissing CCSO because, as a state agency, it is immune from suit under the Eleventh Amendment to the

1. The Magistrate Judge’s R&R sets forth in sufficient detail the relevant background of this case, as well as the applicable legal standards. Because Plaintiff did not object to the Magistrate Judge’s overview of the factual allegations and because the Court finds that the Magistrate Judge’s account accurately reflects the record, the Court incorporates and adopts for purposes of this Order the Magistrate Judge’s proposed findings and summary of the relevant background. However, as an update, on May 4, 2015, subsequent to the entry of the R&R, Plaintiff filed a

United States Constitution. Additionally, the Magistrate Judge concludes that Plaintiff's Complaint fails to state a claim with respect to Matthews and Walker. Thus, the R&R recommends dismissing Plaintiff's Complaint without prejudice and without issuance and service of process as to CCSO, Matthews, and Walker.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). Parties are allowed to make a written objection to the Magistrate Judge's proposed findings and recommendations within fourteen days after being served a copy of the R&R. 28 U.S.C. § 636(b)(1). This Court is charged with conducting a de novo review of any portion of the R&R to which a specific objection is registered, and the Court may accept, reject, or modify the R&R's findings and recommendations in whole or in part. *Id.* Additionally, the Court may receive additional evidence or recommit the matter to the Magistrate Judge with instructions. *Id.* A party's failure to object is accepted as an agreement with the conclusions of the Magistrate Judge. *See Thomas v. Arn*, 474 U.S. 140 (1985). In the absence of a timely filed, specific objection—or as to those portions of the R&R to which no specific objection is made—this Court “must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee note).

The Court has carefully reviewed the entire record de novo, including Plaintiff's Objections, and finds and concludes that the Magistrate Judge fairly and accurately summarized the relevant facts and applied the correct principles of law. Therefore, because the Court has not

one-page document styled as a Motion to Amend Complaint (ECF No. 19). Notably, Plaintiff did not attach a proposed amended complaint to this filing.

discerned any error in the Magistrate Judge's analysis, the Court hereby accepts and adopts the Magistrate Judge's thorough and well-reasoned R&R and incorporates it into this Order. Accordingly, Plaintiff's Complaint is dismissed without prejudice and without issuance and service of process as to CCSO, Matthews, and Walker. To the extent Plaintiff wishes to proceed as to the remaining Defendants or amend his Complaint, this action is referred back to the Magistrate Judge for further pretrial matters.

CONCLUSION

For the foregoing reasons, the Court **ADOPTS** the Magistrate Judge's R&R. It is **THEREFORE ORDERED** that Plaintiff's Complaint is **DISMISSED** without prejudice and without issuance and service of process as to CCSO, Matthews, and Walker. Accordingly, this action is referred back to the Magistrate Judge for further pretrial matters.

AND IT IS SO ORDERED.



PATRICK MICHAEL DUFFY
United States District Judge

May 11, 2015
Charleston, South Carolina