

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

Donald Louis Colbert, Jr., #77497-004,	)	C/A NO. 2:09-848-CMC-RSC
	)	
Plaintiff,	)	
	)	<b>OPINION and ORDER</b>
v.	)	
	)	
Mildred Riveria; Anita Jones; Rikantas	)	
Majauskas MD,	)	
	)	
Defendants. <sup>1</sup>	)	
_____	)	

This matter is before the court on Plaintiff's *pro se* complaint, filed in this court pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(c), DSC, this matter was referred to United States Magistrate Judge Robert S. Carr for pre-trial proceedings and a Report and Recommendation ("Report"). On August 18, 2009, the Magistrate Judge issued a Report recommending that Defendants' motion for summary judgment be granted and this matter dismissed with prejudice. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Plaintiff has filed objections and supplemental objections to the Report on August 26 and September 28, 2009.

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. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo*

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<sup>1</sup>Defendant "Harry Leppin, Director of Federal Bureau of Prisons, more correctly identified as Harley G. Lappin, was dismissed from this action by order of this court filed May 20, 2009.

determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b).

After reviewing the record of this matter, the applicable law, the Report and Recommendation of the Magistrate Judge, and Plaintiff's objections and supplemental objections, the court agrees with the conclusions of the Magistrate Judge. Accordingly, the court adopts and incorporates the Report and Recommendation by reference in this Order.

Plaintiff's objections are without merit. Plaintiff argues that statements contained in his declaration, submitted in support of his Objection to Defendants' Motion to Dismiss (Dkt. # 36, filed Aug. 6, 2009), create genuine issues of material fact. At most, Plaintiff's Declaration conceivably addresses issues relating to negligence. There is simply no evidence that Defendants were deliberately indifferent to Plaintiff's serious medical needs in violation of the Eighth Amendment. Missed appointments, alleged failures to sufficiently explain treatment and timetables for surgery do not, in any manner, constitute deliberate indifference. Additionally, Plaintiff has not submitted any evidence that a delay of surgery of at least six (6) months beyond the last date of any indication of acute otitis media was medically unnecessary.

Defendants' motion for summary judgment is **granted** and this matter is dismissed with prejudice.

**IT IS SO ORDERED.**

s/ Cameron McGowan Currie  
CAMERON MCGOWAN CURRIE  
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina  
October 21, 2009

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