

Sterling L. Harley, #278871,
 Plaintiff,
 v.
 South Carolina Department of Corrections,
 Defendant.

Civil Action No. 2:16-3925-RMG
ORDER AND OPINION

I. Background

II. Discussion

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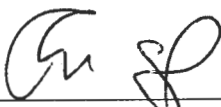
and declaratory relief with respect to his incarceration there.” *Rendelman v. Rouse*, 569 F.3d 182, 186 (4th Cir. 2009) (citations omitted). Defendant does not argue that injunctive relief is not moot. Rather, he opposes the motion to dismiss and objects to the Report and Recommendation by attempting to assert a claim for money damages for injuries allegedly caused by inmates at RCI. (Dkt. Nos. 18, 22.) But as the Magistrate Judge determined, the sole Defendant in this action has Eleventh Amendment immunity from any claim for money damages. *See Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 67 (1989). Plaintiff must seek money damages from the State of South Carolina in the South Carolina courts, not federal court.

Further, “it is axiomatic that the complaint may not be amended by the briefs in opposition to a motion to dismiss.” *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101 (7th Cir. 1984). The Magistrate Judge observed that Plaintiff might be attempting to assert a failure-to-protect case under § 1983, and in the Report and Recommendation explained to Plaintiff that to bring a § 1983 action he must move, by June 22, 2017, to amend his complaint to name persons as defendants, not the state or its departments. (Dkt. No. 20 at 5.) Plaintiff was informed that a motion to amend must include a proposed amended complaint and proposed service documents (*id.*), but he filed no such motion.

III. Conclusion

For the foregoing reasons, the Court **ADOPTS** the Report and Recommendation of the Magistrate Judge as the Order of the Court, **GRANTS** the motion to dismiss, and **DISMISSES AS MOOT** this action.

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Court Judge

June 30, 2017
Charleston, South Carolina