

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

James M. Cuyler,)	C/A NO. 3:14-3228-CMC-SVH
)	
Plaintiff,)	
)	OPINION and ORDER
v.)	
)	
Department of the Army,)	
)	
Defendant.)	
)	

This matter is before the court on Plaintiff's *pro se* complaint, filed in this court pursuant to 42 U.S.C. § 1983.

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(e), DSC, this matter was referred to United States Magistrate Judge Shiva V. Hodges for pre-trial proceedings and a Report and Recommendation ("Report"). On August 21, 2014, the Magistrate Judge issued a Report recommending that Plaintiff's complaint be dismissed without issuance and service of process. 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 no objections and the time for doing so has expired.

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* 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 considering the record, the applicable law, and the Report and Recommendation of the Magistrate Judge, 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.

The Report concludes that the complaint should be dismissed “without service of process” without specifically noting whether dismissal should be with or without prejudice. *See* Report at 7, ECF No. 9. As noted in the court’s dismissal of *Culyer v. Department of the Army*, D.S.C. Civil Action No. 3:10-1561-CMC-JRM (*Culyer* II), that complaint was dismissed “with prejudice to pursuit of the same or related claims in this court but without prejudice to pursuit of the same or related claims in a more appropriate forum.” *Culyer* II, ECF No. 15 at 5. Even as an attempt to “reopen” Plaintiff’s first case (D.S.C. Civil Action No. 3:08-3261-CMC-JRM), this matter constitutes a “pursuit of the same or related claims in this court.” Accordingly, this matter is dismissed **with prejudice** and without issuance and service of process.

IT IS SO ORDERED.

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

Columbia, South Carolina
September 15, 2014