

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

Jabber J. Straws #231018, )  
aka Jabber Jomo Straws, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
A.J. Padula, Warden of Lee Correction )  
Institution of the South Carolina Dept. of )  
Corrections; Susan Richie, Head of )  
Classification of the South Carolina Dept. of )  
Corrections, )  
 )  
Defendant. )  
\_\_\_\_\_ )

C.A. No. 4:10-cv-01957-JMC

**ORDER**

This matter is before the court on the Magistrate Judge’s Report and Recommendation [Doc. 52]. Plaintiff is proceeding *pro se* on his complaint for various state and federal causes of action.

The Magistrate Judge’s Report and Recommendation, filed on May 13, 2011, recommends that Plaintiff’s complaint be dismissed for failure to prosecute pursuant to Fed. R. Civ. P. 41(b) with prejudice. The Report and Recommendation sets forth in detail the relevant facts and legal standards on this matter, and the court incorporates the Magistrate Judge’s recommendation herein without a recitation.

The Magistrate Judge’s Report and Recommendation is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court is charged with making a *de novo* determination of those

portions of the Report and Recommendation to which specific objections are made, and the court may accept, reject, or modify, in whole or in part, the Magistrate Judge's recommendation or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1).

Plaintiff was advised of his right to file objections to the Report and Recommendation [Doc. 52-1]. Plaintiff filed timely objections to the Report and Recommendation. [Doc. 54].

The Magistrate Judge recommends dismissal of this action based on Plaintiff's failure to respond to Defendants' Motion for Summary Judgment [Doc. 47] or the Magistrate Judge's order to require him to respond to such motion [Doc. 48]. Therefore, the Magistrate Judge concluded that Plaintiff abandoned his lawsuit. [Report at 2, Doc. 52]. In his objections to the Report and Recommendation, Plaintiff claims that it was impossible for him to comply with the court's order to respond to Defendants' Motion for Summary Judgment because Defendants did not respond completely to Plaintiff's request for discovery, missed the time to respond and requested an extension, and the court failed to respond to Plaintiff's motion to the court for Defendants to respond adequately to his discovery requests. Plaintiff requests that the court not dismiss the case, but instead schedule it for trial.

The record reveals that Plaintiff did not object to Defendants' request for an extension of time to file dispositive motions in this case; Plaintiff requested that the court require Defendants to respond to his discovery requests so that he could adequately prepare his case. [See Response to Notice of Motion and Motion for Extension of Time on Behalf of the Defend[a]nts, Doc. 27 at 1-2, filed on December 3, 2010]. Defendants responded that they inadvertently omitted responses to Plaintiff's requests and needed additional time to respond and another extension to file dispositive motions. [See Notice of Motion and Second Motion for Extension of Time on Behalf of Defendants,

Doc. 29, filed December 6, 2010]. On December 10, 2010, Plaintiff filed a second Motion to Compel requesting Defendants' responses to his discovery requests and a motion to extend the time to file motions in this case. [Docs. 31 and 32]. By order dated January 19, 2011 [Doc. 39], the Magistrate Judge granted both Plaintiff and Defendants' requests for extensions of time to file dispositive motions . The Magistrate Judge further granted Defendants' motion for extension of time to file responses to Plaintiff's discovery requests, and therefore, determined that Plaintiff's Motion to Compel was moot since Defendants had already responded to Plaintiff's discovery requests by that time. By order dated February 1, 2011 [Doc. 43], the Magistrate Judge granted another request of Defendants to extend the time to file dispositive motions. Thereafter, Defendants filed their Motion for Summary Judgment [Doc. 47] and Plaintiff failed to respond despite notice from the Magistrate Judge to do so. Furthermore, Plaintiff had neither filed any motions to compel Defendants' responses to Plaintiff's discovery nor any dispositive motions of his own. Therefore, the Magistrate Judge could not have known that Plaintiff was not satisfied with Defendants' late responses to Plaintiff's discovery requests.

After a thorough review of the Report and Recommendation and the record in this case, the court adopts the Magistrate Judge's Report and Recommendation and incorporates it herein.

It is therefore **ORDERED** that Plaintiffs' action is hereby **DISMISSED** with prejudice.

**IT IS SO ORDERED.**



United States District Judge

Greenville, South Carolina  
November 28, 2011