

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

Tookie Brown, # 120395,)	
)	
Plaintiff,)	C.A. No. 4:12-cv-02595-TLW
)	
-vs-)	
)	
Noel Hebert, Accounting Manager of)	
SCDC; FNU Drego, Doctor of Kershaw CI;)	
FNU Tomarchio, Acting Medical Director)	
of SCDC; Mrs. FNU Mungo, Nurse of)	
Kershaw CI; FNU Phillip, Nurse of)	
Kershaw CI, and FNU Herring, Nurse of)	
Kershaw CI, et al., in their individual)	
And/or personal capacities,)	
)	
Defendant.)	
_____)	

ORDER

The plaintiff, Tookie Brown (“Plaintiff”), filed this action under 42 U.S.C. § 1983 on September 10, 2012, alleging violations of his constitutional rights. (Doc. #1). This matter is now before the Court for consideration of the Plaintiff’s recently filed Motion Requesting Dismissal Without Prejudice (“Motion to Dismiss”), (Doc. #56), filed on December 9, 2013. Also before the Court are (1) the Defendants’ Motion for Summary Judgment, (Doc. #33), filed on April 24, 2013, (2) the Plaintiff’s Motion for Judgment on the Pleadings, (Doc. #46), filed on November 15, 2013, and (3) the Report and Recommendation (“Report”), (Doc. #53), filed on December 6, 2013, by Magistrate Judge Thomas E. Rogers, to whom this case was previously assigned. In the Report, the Magistrate Judge recommends denying Plaintiff’s Motion for Judgment on the Pleadings, (Doc. #46), and granting Defendants’ Motion for Summary Judgment, (Doc. #33), for

failure to exhaust administrative remedies. The Plaintiff filed objections to the Report on December 27, 2013. (Doc. #59).

Rule 41 of the Federal Rules of Civil Procedure governs dismissal of actions in federal court. Subsection (a)(2) permits voluntary dismissal of an action by the Plaintiff by court order if an opposing party has already served an answer or motion for summary judgment. Unless the court orders otherwise, a dismissal in this manner is without prejudice. (Id.).

Because the Defendants have already served a motion for summary judgment in this case, Rule 41(a)(2) governs the Plaintiff's Motion to Dismiss. In his Motion to Dismiss, Plaintiff states that he agrees with the Defendants that he prematurely filed the case and that the Court should dismiss his case without prejudice. (Doc. #56). Plaintiff's objections to the Report cite his Motion to Dismiss and again request that the Court dismiss the case without prejudice. (Doc. #59). Thus, although the Plaintiff filed what he captioned as "objections," the substance of the filing aligns with grounds for dismissal recited by both the Defendants and the Magistrate Judge. As a result, the Court finds that dismissal is appropriate in this case.

The Court has carefully reviewed the record and in light of the Plaintiff's position, the Court **GRANTS** the Plaintiff's Motion to Dismiss. (Doc. #56). The case is **DISMISSED** *without prejudice*. In light of the above ruling, the Report, (Doc. # 53), the Defendants' Motion for Summary Judgment, (Doc. #33), and the Plaintiff's Motion for Judgment on the Pleadings, (Doc. #46), are terminated as moot.

IT IS SO ORDERED.

s/Terry L. Wooten
Chief United States District Judge

February 26, 2014
Florence, South Carolina