

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

Jose Gamez-Gonzalez,)
Plaintiff,) Civil Case No.: 4:14-cv-02668-JMC
v.)
United States of America,)
Defendant.)

)

ORDER

Pro se Jose Gamez-Gonzalez (“Plaintiff”), a federal prisoner incarcerated at Estill Federal Correctional Institution in South Carolina (“Estill FCI”), filed a Complaint pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 2671–2680 (“FTCA”) on July 1, 2014. (ECF No. 1.) Plaintiff alleges that “he has suffered neck, back and knee injuries which have gone unattended to and have been neglected by the Bureau of Prisons medical staff.” (ECF No. 1-2 at 3.)

The Magistrate Judge’s Report and Recommendation, filed on May 17, 2017, recommends that Plaintiff’s Complaint and Motion to Amend Complaint be dismissed without prejudice. (ECF No. 48.) On April 10, 2017, Defendant filed a motion to dismiss Plaintiff’s Complaint. (ECF No. 40.) Because Plaintiff is proceeding pro se, on April 11, 2017, the court provided Plaintiff a notice regarding summary judgment procedures and the possible consequences if he failed to respond adequately to the court’s Order. (ECF No. 41.) On April 28, 2017, Plaintiff filed a response in opposition to Defendant’s Motion to Dismiss and a Motion to Amend his Complaint to assert a Bivens action. (ECF Nos. 44, 45.) On May 10, 2017, Defendant filed a response in opposition to Plaintiff’s Motion to Amend Complaint, explaining that Plaintiff failed to exhaust his administrative remedies. (ECF No. 47.) The Magistrate Judge recommended that Plaintiff’s FTCA

claim be dismissed pursuant to S.C. Code 15-36-100 (1976, as amended).¹ (ECF No. 48, at 7.) As to Plaintiff's Motion to Amend to include a Bivens claim, the Magistrate Judge determined that his proposed amendment does not cure his failure to exhaust administrative remedies in this action. (ECF No. 48 at 11.) 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. *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 (ECF No. 48-1.) However, Plaintiff filed no objections to the Report and Recommendation. In the absence of objections to the Magistrate Judge's Report and Recommendation, this court is not required to provide an explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Rather, "in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on

¹ In order to pursue a medical malpractice claim in South Carolina, a plaintiff must file "as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim . . ." S. C. Code Ann. § 15-36-100 (1976, as amended).

the face of the record in order to accept the recommendation.”” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Furthermore, failure to file specific written objections to the Report and Recommendation results in a party’s waiver of the right to appeal from the judgment of the District Court based upon such recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).

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. (ECF No. 48.) It is therefore **ORDERED** that Plaintiff’s Complaint (ECF No. 1) and Motion to Amend Complaint (ECF No. 45) are **DISMISSED** without prejudice.

IT IS SO ORDERED.



United States District Judge

July 19, 2017
Columbia, South Carolina