

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

Shaheen Cabbagestalk, # 295567,

Plaintiff,

v.

Ms. Hardin; Headquarters Grievance
Branch; DHO Ms. Alyson Glidewell;
Cpl. Hines; Ofc. Harruff; Nurse Tarcia
James; Sgt. S. Terry; and Lt. Tompkins,

Defendants.

No: 5:13-cv-2974-RMG

ORDER

This matter is before the Court on the Report and Recommendation (“R&R”) of the Magistrate Judge, (Dkt. No. 50), recommending this Court deny Plaintiff’s motion for default judgment, (Dkt. No. 43). For the reasons set forth below, the Court agrees with and adopts the R&R as the order of the Court.

Background

Plaintiff, Shaheen Cabbagestalk, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983. Plaintiff alleges that Defendants filed an untimely response to his summary judgment motion. (Dkt. No. 43). Defendants’ response was timely served and filed on February 6, 2014. (Dkt. No. 36). Plaintiff has now made objections to the R&R, again contending that the response was untimely. (Dkt. No. 71). Defendants then filed a reply. (Dkt. No. 72).

Legal Standard

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). This Court is charged with making a

de novo determination of those portions of the R&R to which specific objection is made, and this Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). This Court may also “receive further evidence or recommit the matter to the magistrate with instructions.” *Id.*

Discussion

Plaintiff filed a motion for default judgment, (Dkt. No. 43), notwithstanding the fact that Defendants filed a timely response to Plaintiff’s summary judgment motion on February 6, 2014, (Dkt. No. 36). Accordingly, Plaintiff’s motion for default judgment should be denied.

Conclusion

After review of the record, the R&R, Plaintiff’s objections, and the applicable law, this Court finds that the R&R accurately portrays the applicable legal and factual issues in this motion. Therefore, the Court agrees with and adopts the R&R as the order of the Court. (Dkt. No. 50). Accordingly, the Court DENIES Plaintiff’s motion for default judgment. (Dkt. No. 43).

AND IT IS SO ORDERED



Richard Mark Gergel
United States District Court Judge

March 17, 2014
Charleston, South Carolina