

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

Shaheen Cabbagestalk, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 Willie F. Smith, Head Administrator over )  
 Food Services; Mr. Marlon Fedd, Lee CI )  
 Food Services Head Food Supervisor; All )  
 Kitchen Supervisors, and Warden Dennis )  
 Bush, )  
 )  
 Defendants. )  
 )

No. 5:14-cv-268-RMG

**ORDER**

This matter is before the Court on the Report and Recommendation (“R&R”) of the Magistrate Judge. (Dkt. No. 17). As set forth below, the Court adopts the R&R as the order of the Court.

**Background**

Plaintiff, a state prisoner, filed this action pro se and has moved the Court to proceed *in forma pauperis*. (Dkt. Nos. 1, 2). Pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(e) DSC, this case was assigned to a Magistrate Judge for all pretrial proceedings. Under established local procedure in this judicial district, the Magistrate Judge conducted a careful review of the Complaint pursuant to the provisions of 28 U.S.C. § 1915 and in light of the following precedents: *Neitzke v. Williams*, 490 U.S. 319 (1980); *Estelle v. Gamble*, 429 U.S. 97 (1976); *Haines v. Kerner*, 404 U.S. 519 (1972); and *Gordon v. Leeke*, 574 F.2d 1147 (4th Cir. 1978). The Magistrate Judge then issued the present R&R. (Dkt. No. 17). Plaintiff failed to file timely objections to the R&R.

### **Legal Standard**

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the 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. Additionally, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). This Court may also “receive further evidence or recommit the matter to the magistrate judge with instructions.” *Id.*

### **Discussion**

After review of the record and the R&R, the Court agrees with and adopts the R&R as the order of the Court. Plaintiff has received three strikes under 28 U.S.C. § 1915(g) and therefore must pay the Court’s filing fee or show that he is under imminent danger of serious physical injury. The Court agrees with the Magistrate Judge that Plaintiff’s complaint fails to satisfy the “imminent danger” requirement and that he must pay the Court’s filing fee in order to proceed with this action.

### **Conclusion**

For the reasons set forth above, the Court agrees with and adopts the R&R as the order of the Court. (Dkt. No. 17). Accordingly, Plaintiff’s motion for leave to proceed *in forma pauperis* is denied. (Dkt. No. 2). Further, Plaintiff shall have fifteen days from the date of the entry of this order to pay the Court’s filing fee. If Plaintiff fails to pay the fee within this fifteen-day period, the Clerk shall dismiss this action without prejudice and without issuance and service of process.

**AND IT IS SO ORDERED.**



---

Richard Mark Gerge  
United States District Court Judge

May 2, 2014  
Charleston, South Carolina