

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA

James Fred Miller,

Plaintiff,

vs.

Joseph Tyson;  
Cpl. Weeks,

Defendants.

C/A No. 5:15-cv-02703-DCN-KDW

ORDER

This case is before the court because of Plaintiff’s failure to comply with the magistrate judge’s Order of August 7, 2015. ECF No. 10.

A review of the record indicates that the magistrate judge ordered Plaintiff to submit items needed to render this case into proper form within twenty-one days, and specifically informed Plaintiff that if he failed to do so, this case would be dismissed *without prejudice*. The court has not received any response from Plaintiff and the time for his compliance has passed. The mail in which the Order was sent to Plaintiff at the address provided when the case was filed has not been returned to the court, thus it is presumed that Plaintiff received the Order, but has neglected to comply with it within the time permitted under the Order.

Plaintiff’s lack of response to the Order indicates an intent to not continue prosecuting this case, and subjects this case to dismissal. *See* Fed. R. Civ. P. 41(b) (district courts may dismiss an action if a Plaintiff fails to comply with “any order of the court.”); *see also Ballard v. Carlson*, 882 F.2d 93, 95 (4th Cir. 1989) (dismissal with prejudice appropriate where warning given); *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir. 1982)(court may dismiss *sua sponte*).

Accordingly, this case is dismissed *without prejudice*. The Clerk of Court shall close the file.<sup>1</sup>

IT IS SO ORDERED.



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David C. Norton  
United States District Judge

September 8, 2015  
Charleston, South Carolina

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<sup>1</sup> Under General Order, Misc. No. 3:07-5014-JFA, this dismissal *without prejudice* does *not* count as a “strike” for purposes of the “three strikes” provision of 28 U.S.C. § 1915(g). If Plaintiff wishes to bring this action in the future, he should obtain new forms for doing so from the Clerk’s Office in Columbia (**901 Richland Street, Columbia, South Carolina 29201**).

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**NOTICE OF RIGHT TO APPEAL**

The parties are hereby notified of the right to appeal this Order within the time period set forth under Rules 3 and 4 of the Federal Rules of Appellate Procedure.

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