

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Lamont Cutner,)	
)	C/A No.: 6:12-cv-02544-GRA-KFM
Plaintiff,)	
)	
v.)	ORDER
)	(Written Opinion)
Wilson Simmons,)	
)	
Defendant.)	
)	

This matter comes before the Court for review of United States Magistrate Judge Kevin F. McDonald's Report and Recommendation made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(d) DSC, and filed on filed on September 11, 2013. Plaintiff Lamont Cutner ("Plaintiff"), a state inmate currently incarcerated at the Broad River Correctional Institution in Columbia, South Carolina, proceeding *pro se*, filed this action on August 31, 2012 pursuant to 42 U.S.C. § 1983.¹ ECF No. 1. On July 15, 2013, this Court issued an order granting Plaintiff's motion to dismiss defendants Marshal and Harrington from this action. ECF No. 99. Accordingly, Defendant Wilson Simmons ("Defendant") is the only remaining defendant. Plaintiff filed a motion to dismiss this action on August 20, 2013. Pl.'s Mot. 1, ECF No. 103. In the motion, Plaintiff requests a dismissal of his federal case, because he wishes to proceed in state court. *Id.* The time for response lapsed on September 9, 2013, and Defendant did not respond by that date. Magistrate Judge McDonald recommends that this Court grant Plaintiff's motion and dismiss Plaintiff's

¹ A prisoner's motion is deemed filed when it is delivered to prison authorities for mailing to the district court. See *Houston v. Lack*, 487 U.S. 266, 270, 108 S. Ct. 2379, 101 L.Ed.2d 245 (1988).

case without prejudice pursuant to Rule 41 of the Federal Rules of Civil Procedure. Report & Recommendation 1, ECF No. 105.

The magistrate judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make 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 Report and Recommendation 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.* "The failure to file objections to the report and recommendation waives any further right to appeal." *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987); see *Carter v. Pritchard*, 34 F. App'x 108, 108 (4th Cir. 2002) (per curiam). Furthermore, in the absence of specific objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). In this case, objections to the Magistrate Judge's Report and Recommendation were due by September 30, 2013. Neither Plaintiff nor Defendant has filed objections, and the time to object has passed.

Under Rule 41, a district court may dismiss an action "at the plaintiff's request only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). The Fourth Circuit has explained "[t]he decision to grant voluntary dismissal under Rule 41(a)(2) is a matter for the discretion of the district court, and its order will

ordinarily not be reversed except for an abuse of discretion.” *Davis v. USX Corp.*, 819 F.2d 1270, 1273 (4th Cir. 1987). “The purpose of Rule 41(a)(2) is freely to allow voluntary dismissals unless the parties will be unfairly prejudiced.” *Id.*

After reviewing the record, this Court finds that the Magistrate Judge’s Report and Recommendation accurately summarizes the case and the applicable law. Accordingly, for the reasons articulated by the Magistrate Judge, the Report and Recommendation is accepted and adopted in its entirety.

IT IS THEREFORE ORDERED that Plaintiff’s motion to dismiss this case is GRANTED, and Plaintiff’s claims are DISMISSED without prejudice.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "G. Ross Anderson, Jr.", is written over a horizontal line.

G. Ross Anderson, Jr.
Senior United States District Judge

October 8, 2013
Anderson, South Carolina