

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

|                                   |   |                            |
|-----------------------------------|---|----------------------------|
| Darell Andre Fuller,              | ) |                            |
|                                   | ) |                            |
| Plaintiff,                        | ) | C.A. No. 6:16-993-HMH-KFM  |
|                                   | ) |                            |
| vs.                               | ) |                            |
|                                   | ) | <b>OPINION &amp; ORDER</b> |
| Dr. Jose Serrano, Dr. V. Loventh, | ) |                            |
| and Dr. L. Berrios,               | ) |                            |
|                                   | ) |                            |
| Defendants.                       | ) |                            |

This matter is before the court on Darell Andre Fuller’s (“Fuller”) motion to appoint counsel and the Report and Recommendation of United States Magistrate Judge Kevin F. McDonald, made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 of the District of South Carolina.<sup>1</sup> Fuller, proceeding pro se, filed a civil rights action pursuant to Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971). Fuller alleges that he received inadequate medical care while he was incarcerated at six federal correctional institutions.

On January 9, 2017, the Defendants filed a motion to dismiss. (Mot. Dismiss, ECF No. 93.) The magistrate judge issued Roseboro orders on January 9, 2017, and February 13, 2017, directing Fuller to respond to the Defendants’ motion to dismiss. (Jan. 9, 2017 Order, ECF

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<sup>1</sup> The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. See Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

No. 92); (Feb. 13, 2017 Order, ECF No. 95.) On March 8, 2017, Fuller filed a motion for an extension of time to respond. (Mot. Extension, ECF No. 99). Magistrate Judge McDonald granted Fuller's motion on March 22, 2017. (Mar. 22, 2017 Order, ECF No. 102.) Fuller did not file a response within the extended time to respond. Based on Fuller's failure to respond, Magistrate Judge McDonald recommends dismissing Fuller's complaint for lack of prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. (R&R 3, ECF No. 106.)

Fuller filed objections to the Report and Recommendation. Objections to the Report and Recommendation must be specific. Failure to file specific objections constitutes a waiver of a party's right to further judicial review, including appellate review, if the recommendation is accepted by the district judge. See United States v. Schronce, 727 F.2d 91, 94 & n.4 (4th Cir. 1984). In the absence of specific objections to the Report and Recommendation of the magistrate judge, this court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

Upon review, Fuller makes no specific objections, but attempts to address the merits of the Defendants' motion to dismiss. (Objs. 1-2, ECF No. 110.) Additionally, Fuller states that "[t]hese defendants keep filing motion[s] to dismiss on the same argument." (Id. at 2, ECF No. 110.) The court notes that, although Fuller initially filed a single complaint against all defendants at the six federal correctional institutions, the Honorable Noel L. Hillman, United States District Judge for the District of New Jersey, severed Fuller's claims and transferred each claim to the proper jurisdiction for each defendant. (Mar. 28, 2016 Order, ECF No. 43.) Based on the foregoing, Fuller appears to have confused the defendants in related suits with the Defendants in this case. Because Fuller's response indicates that he wishes to continue with this case and respond to the Defendants' motion to dismiss, the court will allow Fuller a 21-day

extension from the date of this order to file a response to the Defendants' motion to dismiss.

This is the final extension that will be granted to respond to the Defendants' motion to dismiss.

Fuller has also filed a second motion to appoint counsel. (Sec. Mot. Appoint Counsel, ECF No. 111.) Magistrate Judge McDonald denied Fuller's first motion to appoint counsel on March 22, 2017. (Mar. 22, 2017 Order, ECF No. 103.) For the reasons set forth in the magistrate judge's order, the instant motion to appoint counsel is denied.

Therefore, after a thorough review of the Report and Recommendation and the record in this case, the court declines to adopt the magistrate judge's Report and Recommendation.

It is therefore

**ORDERED** that Fuller file a response to Defendant's motion to dismiss within 21 days of this order. It is further

**ORDERED** that Fuller's motion to appoint counsel, docket number 111, is denied. It is further

**ORDERED** that this case is remanded to the magistrate judge for further proceedings.

**IT IS SO ORDERED.**

s/Henry M. Herlong, Jr.  
Senior United States District Judge

Greenville, South Carolina  
May 10, 2017