

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

Jerrico M Bailey,
Plaintiff,
vs.
M. Moyer,
Defendant.

Civil Action No. 6:23-cv-01202-TMC

ORDER

Plaintiff Jerrico M Bailey, a pretrial detainee proceeding pro se and in forma pauperis, filed this action pursuant to 42 U.S.C. § 1983. (ECF Nos. 1-2 and 13). In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(d) (D.S.C.), this matter was referred to a magistrate judge for all pretrial proceedings. On May 3, 2023, the magistrate judge issued a Proper Form Order, warning Plaintiff that his case was subject to dismissal for failure to state a claim and allowing Plaintiff fourteen days to amend his complaint to correct the noted deficiencies. (ECF No. 11). Plaintiff filed an amended complaint. (ECF No. 13). On May 24, 2023, the magistrate judge issued a Report and Recommendation ("Report") (ECF No. 17), recommending the court dismiss this action without prejudice, without further leave to amend, and without issuance and service of process because, despite the filing of the amended complaint, Plaintiff had failed to cure the deficiencies identified in the Proper Form Order. (ECF No. 17). The Report notified Plaintiff of his right to file objections thereto, (ECF No. 17 at 8), and was mailed to Plaintiff on May 24, 2023, at the address he provided to the court (ECF No. 18). The Report has not been returned as undeliverable and Plaintiff is, therefore, presumed to have received it. Nevertheless, Plaintiff has failed to file any objections to the Report and the time in which to do so has expired.

The magistrate judge’s recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. *Wimmer v. Cook*, 774 F.2d 68, 72 (4th Cir. 1985) (quoting *Mathews v. Weber*, 423 U.S. 261, 270–71 (1976)). Nevertheless, “[t]he district court is only required to review *de novo* those portions of the report to which specific objections have been made, and need not conduct *de novo* review ‘when a party makes general and conclusory objections that do not direct the court to a specific error in the magistrate judge’s proposed findings and recommendations.’” *Farmer v. McBride*, 177 Fed. App’x 327, 330–31 (4th Cir. 2006) (quoting *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982)); *see also Elijah v. Dunbar*, 66 F.4th 454, 460 (4th Cir. 2023) (noting “an objecting party ‘must object to the finding or recommendation on that issue with sufficient specificity so as reasonably to alert the district court of the true ground for the objection’” and “‘an objection stating only ‘I object’ preserves no issue for review’” (quoting *United States v. Midgette*, 478 F.3d 616, 622 (4th Cir. 2007); *Lockert v. Faulkner*, 843 F.2d 1015, 1019 (7th Cir. 1988))). Thus, “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 Advisory Committee’s note). 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). However, in the absence of specific objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. *Greenspan v. Brothers Prop. Corp.*, 103 F. Supp. 3d 734, 737 (D.S.C. 2015) (citing *Camby v. Davis*, 718 F.2d 198, 199–200 (4th Cir. 1983)). Furthermore, failure to file specific written objections to the Report results in a party’s waiver of the right to appeal the district

court's judgment based upon that recommendation. *See Elijah*, 66 F.4th at 460 (quoting *Lockert*, 843 F.2d at 1019); *Martin v. Duffy*, 858 F.3d 239, 245 (4th Cir. 2017).

Thus, having reviewed the Report and the record and, finding no clear error, the court agrees with and wholly **ADOPTS** the magistrate judge's findings and recommendations in the Report (ECF No. 17), which is incorporated herein by reference. Accordingly, Plaintiff's complaint is **DISMISSED** without prejudice, without further leave to amend, and without issuance and service of process.

IT IS SO ORDERED.

s/Timothy M. Cain
United States District Judge

Anderson, South Carolina
October 10, 2023

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.