

recommendation were timely filed on July 3, 2012 by defendants and on July 13, 2012 by plaintiff.

A de novo review of the record indicates that the magistrate judge's report accurately summarizes this case and the applicable law. Accordingly, the magistrate judge's Report and Recommendation is **AFFIRMED**, and defendants' motion for summary judgment is **GRANTED IN PART and DENIED IN PART**. Defendants' motion for summary judgment is denied with respect to the claims raised in Grievance Number ACI-0295011 – that the cafeteria is not ADA complaint, making it difficult for plaintiff to maneuver with his wheelchair.

The court takes notice that the defendants' "Objection" and the attendant Exhibits to the R&R should have been filed with defendants' motion to dismiss on January 27, 2012. There is nothing to indicate that this material was unavailable to defendants as of that date. Failure of defendants to fully brief and argue the matters addressed in their "Objection" to the R&R requires this court to remand plaintiff's claim to the Magistrate Judge so that she can address his final claim on a full record. Such piecemeal litigation is improper and will not be sanctioned by this court.

IT IS FURTHER ORDERED that Grievance ACI-0295-11 is remanded to the Magistrate Judge for reconsideration in light of the material that was provided to the court as Exhibits to defendants' "Objection" to the R&R, so that the "Objection" may be considered as a new motion for summary judgment. Plaintiff shall have until April 1, 2013 to respond to defendants' new motion for summary judgment.

must be 'sufficiently understandable to one in appellant's circumstances fairly to appraise him of what is required.'" Id. at 846. Plaintiff was advised in a clear manner that his objections had to be filed within ten (10) days, and he received notice of the consequences at the appellate level of his failure to object to the magistrate judge's report.

IT IS FURTHER ORDERED that plaintiff's motion for preliminary injunction is **DENIED.**

AND IT IS SO ORDERED.



David C. Norton
United States District Judge

February 12, 2013
Charleston, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified that any right to appeal this Order is governed by Rules 3 and 4 of the Federal Rules of Appellate Procedure