

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
BEAUFORT DIVISION

Timothy Wayne Foster,	)	C/A No. 9:17-cv-2975-DCC
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	ORDER
Capt. Carol Scott and Ofc. Marie Smith,	)	
	)	
Defendants.	)	
	)	

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2), (D.S.C.), this matter was referred to United States Magistrate Judge Bristow Marchant for pre-trial proceedings. On November 28, 2018, Defendants filed a Motion for Judgment on the Pleadings. ECF No. 65. On December 3, 2018, this Court issued an Order pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), in which Plaintiff was advised of the summary judgment/dismissal procedure and the possible consequences if he failed to respond adequately. ECF No. 66. Despite this explanation, Plaintiff did not respond to the Motion.<sup>1</sup>

On December 17, 2018, the Magistrate Judge issued a Report and Recommendation (“Report”) recommending dismissal of this action pursuant to Rule 41(b) of the Federal Rules of Civil Procedure because Plaintiff failed to comply with an Order of this Court. ECF No. 69. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report. *Id.* Plaintiff failed to file objections or

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<sup>1</sup>The Court notes that the *Roseboro* Order was returned as undeliverable; however, it is Plaintiff’s responsibility to keep the Court apprised of his current address. ECF Nos. 13, 68.

update his address and the time to do so has lapsed.

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 the Court. See *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a de novo determination of any portion of the Report of the Magistrate Judge to which a 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 to the Magistrate Judge with instructions. See 28 U.S.C. § 636(b). The Court will review the Report only for clear error in the absence of an objection. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of 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.” (citation omitted)).

After considering the record in this case, the applicable law, and the Report of the Magistrate Judge, the Court finds no clear error and agrees with the Report’s recommendation. Accordingly, the Court adopts and incorporates the Report by reference in this Order. This action is **DISMISSED** with prejudice pursuant to Rule 41(b) for failing to comply with an Order of this Court.

IT IS SO ORDERED.

s/ Donald C. Coggins, Jr.  
United States District Judge

January 8, 2019  
Spartanburg, South Carolina