

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

Dwight T. Elder, Jr., aka Dwight
Thomas Elder, Jr.,
Plaintiff,

Civil Action No. 9:22-cv-1666-TMC

vs.

ORDER

Hayden Family; Dr. Pacheco; Spring
Memorial Hospital; Lancaster, S.C.
Police Division,
Defendants.

Plaintiff, proceeding pro se, filed this action against Defendants, alleging Defendants spit
in his food among other things while he was incarcerated in the Charleston County jail. (ECF No.
1). It appears Plaintiff was no longer incarcerated at the time he filed his complaint. In accordance
with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02(B)(2)(e) (D.S.C.), this matter was referred
to a magistrate judge for all pretrial proceedings. On August 3, 2022, the magistrate judge issued
a proper form order affording Plaintiff an opportunity to cure specified defects in his complaint.
(ECF No. 5). The order was mailed to Plaintiff at the address he provided the court. (ECF No. 6).
The order was not returned as undeliverable and, therefore, Plaintiff is presumed to have received
it. Plaintiff did not file an amended complaint, attempt to cure the deficiencies, or otherwise
respond the magistrate judge’s order.

Now before the court is the magistrate judge’s Report and Recommendation (“Report”),
recommending that the court dismiss this action for failure to allege facts sufficient to establish
subject matter jurisdiction in this court; for failure to state a claim upon which relief can be granted
or even a cognizable claim for relief; and for failure to comply with the court’s August 3 order.

(ECF No. 14 at 2–8). The magistrate judge recommended that Plaintiff’s complaint be dismissed without leave to amend and without issuance and service of process. *Id.* at 8. On October 21, 2022, the Report was mailed to Plaintiff at the address he had provided the court along with a notice advising Plaintiff of his right to file objections and of the consequences of failing to do so. (ECF Nos. 14 at 9; 15). The Report has not been returned to the court as undeliverable. Therefore, Plaintiff is presumed to have received the Report. Nonetheless, Plaintiff has not submitted any objections. The time for Plaintiff to object to the Report has now expired, and this matter is ripe for review.

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. April 26, 2006) (quoting *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982)). 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, 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)).

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. 14), which is incorporated herein by reference. Accordingly, the court summarily **DISMISSES** the Complaint (ECF No. 1) without 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
February 13, 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.