

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**BECKLEY DIVISION**

PAUL MCCAFFERTY,

Plaintiff,

v.

CIVIL ACTION NO. 5:18-cv-00418

TFC JOHN W. GILKESON, et al.,

Defendants.

**MEMORANDUM OPINION AND ORDER**

On March 12, 2018, the Plaintiff, proceeding *pro se*, filed his *Complaint* (Document 3) in this matter. On November 12, 2018, Defendant Deputy J. L. Pachis filed a motion for summary judgment (Document 74). Also, on November 12, 2018, Defendants CPL. M.A. Agee and TFC John W. Gilkeson filed a motion for summary judgment (Document 76).

By *Standing Order* (Document 4) entered on March 12, 2018, and by *Memorandum Opinion and Order* (Document 43) entered on September 18, 2018, this action was referred to the Honorable Omar J. Aboulhosn, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636.

On November 14, 2018, Magistrate Judge Aboulhosn entered an *Order* (Document 78) advising the Plaintiff of his right to file a response to the pending motions for summary judgment,

and advising him that failure to respond may result in a recommendation of denial of the relief sought in his *Complaint* and dismissal of his lawsuit. The Plaintiff failed to respond.<sup>1</sup>

On January 3, 2019, Magistrate Judge Aboulhosn entered an *Order* (Document 87) directing the Plaintiff to show cause as to why his civil action should not be dismissed for failure to prosecute, and notifying him that failure to respond would result in a recommendation of dismissal of the matter. The Plaintiff failed to respond.<sup>2</sup>

Subsequently, on February 19, 2019, Magistrate Judge Aboulhosn submitted a *Proposed Findings and Recommendation* (Document 89) wherein it is recommended that the Plaintiff's *Complaint* (Document 3) be dismissed without prejudice, that the Defendants' motions for summary judgment (Documents 74 & 76) be denied as moot, and that this matter be removed from the Court's docket. Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by March 8, 2019, and none were filed by either party.

The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and a party's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and*

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<sup>1</sup>The Docket reflects that the November 14, 2018 *Order* (Document 78) mailed to the Plaintiff was returned as undeliverable on November 28, 2018.


<sup>2</sup>The Docket reflects that the January 3, 2019 *Order* (Document 87) mailed to the Plaintiff was returned as undeliverable on January 8, 2019.

*Recommendation*, and **ORDERS** that the Plaintiff's *Complaint* (Document 3) be **DISMISSED without prejudice**, that the Defendants' motions for summary judgment (Documents 74 & 76) be **DENIED AS MOOT**, and that this matter be **REMOVED** from the Court's docket.

Lastly, the Court **ORDERS** that the Plaintiff's *Motion for an Order Compelling Discovery* (Docket 40) and Plaintiff's *Motion to Correct Errors in Complaint* (Document 50) be **TERMINATED AS MOOT**.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Aboulhosn, counsel of record, and any unrepresented party.

ENTER: March 13, 2019

  
IRENE C. BERGER  
UNITED STATES DISTRICT JUDGE  
SOUTHERN DISTRICT OF WEST VIRGINIA