

APPENDIX A

UNPUBLISHED DECISION OF THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT RENDERED AND FILED ON
11/30/2022 AFFIRMING THE DECISION FROM THE DISTRICT
COURT OF SOUTH CAROLINA, SPARTANBURG DIVISION

APPEALS COURT CASE No. 21-2056

UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 21-2056

ISRAEL ROMERO,

Plaintiff - Appellant,

v.

ALLWELL FROM ABSOLUTE TOTAL CARE; THOMAS STEPHENS, Sales
Representative Medicare Sales,

Defendants - Appellees.

Appeal from the United States District Court for the District of South Carolina, at
Spartanburg. J. Michelle Childs, District Judge. (7:20-cv-04344-JMC)

Submitted: October 28, 2022

Decided: November 30, 2022

Before GREGORY, Chief Judge, and NIEMEYER and KING, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Israel Romero, Appellant Pro Se. Michael James Bentley, Jackson, Mississippi, Jonathan
Edward Schulz, BRADLEY ARANT BOULT CUMMINGS LLP, Charlotte, North
Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Israel Romero appeals the district court's order adopting the magistrate judge's recommendations to deny Romero's summary judgment motion and dismiss his civil complaint against Defendants. We have reviewed the record and find no reversible error. Accordingly, we affirm the district court's judgment. *See Romero v. Allwell from Absolute Total Care*, No. 7:20-cv-04344-JMC (D.S.C. Sept. 17, 2021). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: November 30, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-2056
(7:20-cv-04344-JMC)

ISRAEL ROMERO

Plaintiff - Appellant

v.

ALLWELL FROM ABSOLUTE TOTAL CARE; THOMAS STEPHENS; Sales
Representative Medicare Sales

Defendants - Appellees

J U D G M E N T

In accordance with the decision of this court, the judgment of the district
court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in
accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

FILED: November 30, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUITNo. 21-2056, Israel Romero v. Allwell from Absolute Total Care
7:20-cv-04344-JMC

NOTICE OF JUDGMENT

Judgment was entered on this date in accordance with Fed. R. App. P. 36. Please be advised of the following time periods:

PETITION FOR WRIT OF CERTIORARI: The time to file a petition for writ of certiorari runs from the date of entry of the judgment sought to be reviewed, and not from the date of issuance of the mandate. If a petition for rehearing is timely filed in the court of appeals, the time to file the petition for writ of certiorari for all parties runs from the date of the denial of the petition for rehearing or, if the petition for rehearing is granted, the subsequent entry of judgment. See Rule 13 of the Rules of the Supreme Court of the United States; www.supremecourt.gov.

VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED COUNSEL: Vouchers must be submitted within 60 days of entry of judgment or denial of rehearing, whichever is later. If counsel files a petition for certiorari, the 60-day period runs from filing the certiorari petition. (Loc. R. 46(d)). If payment is being made from CJA funds, counsel should submit the CJA 20 or CJA 30 Voucher through the CJA eVoucher system. In cases not covered by the Criminal Justice Act, counsel should submit the Assigned Counsel Voucher to the clerk's office for payment from the Attorney Admission Fund. An Assigned Counsel Voucher will be sent to counsel shortly after entry of judgment. Forms and instructions are also available on the court's web site, www.ca4.uscourts.gov, or from the clerk's office.

BILL OF COSTS: A party to whom costs are allowable, who desires taxation of costs, shall file a Bill of Costs within 14 calendar days of entry of judgment. (FRAP 39, Loc. R. 39(b)).

APPENDIX B

DECISION FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF SOUTH CAROLINA, SPARTANBURG DIVISION,
RENDERED AND FILED ON 09/17/21 DENYING PETITIONER'S
MOTION FOR SUMMARY JUDGMENT AND DISMISSING THE
COMPLAINT

DISTRICT COURT CIVIL CASE No. 7:20-cv-04344-JMC

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

Israel Romero,)	
)	
Plaintiff,)	Civil Action No. 7:20-cv-04344-JMC
)	
v.)	ORDER AND OPINION
)	
Allwell from Absolute Total Care and)	
Thomas Stephens,)	
)	
Defendants.)	
)	

Plaintiff Israel Romero ("Plaintiff"), proceeding *pro se* and *in forma pauperis*, alleges fraud and unfair trade practices under various state and federal laws by Defendants Allwell from Absolute Total Care ("Allwell") and Thomas Stephens ("Stephens"). (ECF No. 27 at 3.) This matter is before the court for review of the Magistrate Judge's Report and Recommendation ("Report I") filed on January 18, 2021 (ECF No. 16), which recommends the court dismiss Plaintiff's Motion for Summary Judgment (ECF No. 15) as premature. The court also considers the Magistrate Judge's subsequent Report and Recommendation ("Report II") (ECF No. 27) which recommends the court dismiss Plaintiff's Amended Complaint (ECF No. 23) for lack of subject matter jurisdiction. (*Id.* at 4.) Plaintiff filed an Objection to Report I on February 11, 2021 (ECF No. 18), and to Report II on April 8, 2021 (ECF No. 30).

For the reasons set forth herein, the court **ACCEPTS** Report I (ECF No. 16) and **DENIES** Plaintiff's Motion for Summary Judgment (ECF No. 15) and **ACCEPTS** Report II (ECF No. 27) and **DISMISSES** the federal law claims under the Fair Debt Collection Practices Act ("FDCPA"),

the Fair Credit Reporting Act (“FCRA”), and all state law claims in Plaintiff’s Amended Complaint (ECF No. 23) without prejudice.¹

I. PROCEDURAL BACKGROUND

On December 15, 2020, Plaintiff filed a civil action against Allwell, Upstate Carolina Radiology, PA, and Receivable Management Group, Inc., alleging numerous state and federal law claims and claiming diversity between two of the parties.² (ECF No. 1 at 3-4.) On January 6, 2021, the Magistrate Judge directed Plaintiff to bring his case into proper form within twenty-one (21) days (ECF No. 8 at 2). At this time, the Magistrate Judge also directed the Clerk of Court to delete Defendant Allwell’s Answer to Plaintiff’s complaint because it was filed prematurely. (*Id.* at 1.)

On January 26, 2021, Plaintiff filed a Motion for Summary Judgment against Defendant Allwell. (ECF No. 15.) The Magistrate Judge issued a Report and Recommendation (“Report I”) recommending Plaintiff’s Motion for Summary Judgment be dismissed on January 28, 2021, explaining the Motion was premature because service of Plaintiff’s Complaint had not yet been authorized and the court’s review of the Complaint was ongoing (ECF No. 16 at 3). Plaintiff filed an Objection to Report I on February 11, 2021. (ECF No. 18.) Plaintiff primarily objected to the dismissal of his Motion for Summary Judgment as premature, claiming “the issue of prematur[ity] is not supported by law or authority” and asserting he has “six legitimate causes of action” which he supported with facts. (ECF No. 18 at 17-18.)

Pursuant to an Order and Amendment Notice filed on February 18, 2021 (ECF No. 20 at 10-11), Plaintiff filed his Amended Complaint on March 4, 2021 (ECF No. 23). The Amended Complaint includes only state law claims for fraud and unfair trade practices against Defendant

¹ All other federal claims in Plaintiff’s Amended Complaint, including those under the Medicare and Medicaid Acts and various federal criminal statutes are dismissed with prejudice.

² The original Complaint lists Allwell as a citizen of California and Receivable Management Group, Inc. as a citizen of Georgia. (ECF No. 1 at 3-4.)

Allwell and names a new Defendant, Thomas Stephens (“Stephens”). (*Id.*) Plaintiff claims both Allwell and Stephens are citizens of South Carolina (*Id.* at 3), which differs from Plaintiff’s assertion in his original Complaint that Allwell is a citizen of California. (ECF No. 1 at 3.) Plaintiff’s Amended Complaint, therefore, no longer alleges Defendants are completely diverse. (ECF No. 23 at 3.) Upon review, the court takes judicial notice that Allwell’s parent, Absolute Total Care, Inc. is incorporated in, and therefore a citizen of, South Carolina.³

On March 25, 2021, the Magistrate Judge issued a Report and Recommendation (Report II) recommending the case be dismissed (ECF No. 27 at 1) because the Amended Complaint failed to state a federal claim for relief. (*Id.* at 3.) Plaintiff then filed an Objection to Report II on March 4, 2021. (ECF No. 30.)

II. LEGAL STANDARD

A. Review of Magistrate Judge’s Report

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. See *Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). The court reviews *de novo* only those portions of a magistrate judge’s report and recommendation to which specific objections are filed, and reviews those portions which are not objected to for clear error, including those portions to which only “general and conclusory” objections have been made. See *Diamond v. Colonial Life*

³ The South Carolina Secretary of State lists Absolute Total Care, Inc. as a South Carolina corporation in good standing. See Absolute Total Care, Inc., S. C. SEC’Y OF STATE BUS. ENTITIES ONLINE, <https://businessfilings.sc.gov/BusinessFiling/Entity/Profile/3f99509e-fa41-42d2-924f-3d41d415372e> (last visited Sept. 16, 2021).

Allwell from Absolute Total Care appears to be part of Absolute Total Care, Inc., which is a wholly owned subsidiary of Centene Corporation. About Us, ABSOLUTE TOTAL CARE, <https://www.absolutetotalcare.com/about-us.html> (last visited Sept. 16, 2021). According to its latest filings with the Securities and Exchange Commission, Centene Corp. is incorporated in Delaware and lists its primary business address in St. Louis, Missouri. Centene Corp, SEC EDGAR FILING TRACKER, <https://sec.report/CIK/0001071739> (last visited Sept. 16, 2021).

& *Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005); *Camby v. Davis*, 718 F.2d 198, 200 (4th Cir. 1983); *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 of the magistrate judge or recommit the matter with instructions. See 28 U.S.C. § 636(b)(1).

B. Review of Pro Se Filings under 28 U.S.C. § 1915

Plaintiff brings this action under 28 U.S.C. § 1915, the *in forma pauperis* statute. As such, the District Court may dismiss this case if the action “fails to state a claim on which relief may be granted.” 28 U.S.C. § 1915(e)(2)(ii). “This standard encompasses complaints that are either legally or factually baseless.” *Cochran v. Morris*, 73 F.3d 1310, 1316 (4th Cir. 1996) (emphasis in original). As a *pro se* litigant, the plaintiff’s pleadings, while accorded liberal construction and held to a less stringent standard than pleadings drafted by an attorney, *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (*per curiam*), must nevertheless allege facts that set forth a claim cognizable in a federal district court. See *Weller v. Dep’t of Soc. Servs.*, 901 F.2d 387, 391 (4th Cir. 1990). In other words, “[t]he ‘special judicial solicitude’ with which a district court should view *pro se* complaints does not transform the court into an advocate.” *Weller*, 901 F.2d at 391.

Finally, a plaintiff’s amended complaint fully replaces the original complaint and renders the original complaint “of no legal effect.” *Young v. City of Mount Rainier*, 238 F.3d 567, 572 (4th Cir. 2001) (quoting *Crysen/Montenay Energy Co. v. Shell Oil Co.*, 226 F.3d 160, 162 (2d Cir. 2000).)

C. Summary Judgment

Summary judgment should be granted “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A fact is “material” if proof of its existence or non-existence would affect the disposition

of the case under the applicable law. *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 248-49 (1986).

A genuine question of material fact exists where, after reviewing the record as a whole, the court finds a reasonable jury could return a verdict for the non-moving party. *Newport News Holdings Corp. v. Virtual City Vision, Inc.*, 650 F.3d 423, 434 (4th Cir. 2011). When ruling on a summary judgment motion, a court must view the evidence in the light most favorable to the non-moving party. *Perini Corp. v. Perini Constr., Inc.*, 915 F.2d 121, 124 (4th Cir. 1990). The non-moving party may not oppose a summary judgment motion with mere allegations or denial of the movant's pleading, but instead must "set forth specific facts" demonstrating a genuine issue for trial. Fed. R. Civ. P. 56(c) (1); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986); *Anderson*, 477 U.S. at 256. All that is required to survive summary judgment is that "sufficient evidence supporting the claimed factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at trial." *Anderson*, 477 U.S. at 249.

III. ANALYSIS

A. The Magistrate Judge's Review

In Report I, the Magistrate Judge recommended Plaintiff's Motion for Summary Judgment be denied as premature. (ECF No. 16 at 3.) The Magistrate Judge pointed out service of the Complaint had not yet been authorized, and therefore, the court was still in the process of reviewing Plaintiff's case under 28 U.S.C. § 1915. Subsequently, Plaintiff filed his Amended Complaint. (ECF No. 23.)

Upon review, Report II determined Plaintiff's Amended Complaint abandoned the federal claims cited in his original Complaint. (ECF No. 27 at 3.) Specifically, the Report found Plaintiff's Amended Complaint made no reference to his prior allegations under the Medicare Act, the Medicaid Act, the Fair Debt Collection Practices Act, or the Fair Credit Reporting Act. (*Id.*)

The Magistrate Judge therefore determined that Plaintiff only alleged two causes of action arising under state law: (1) fraud and (2) unfair trade practices under the South Carolina Unfair Trade Practices Act ("SCUTPA"). (*Id.*) In light of these changes, the Magistrate judge recommended the dismissal of Plaintiff's abandoned claims. (*Id.*)

The Magistrate Judge also recommended the court "abstain from exercising jurisdiction" over Plaintiff's remaining state law claims under the four statutory factors of 28 U.S.C. § 1367(c), which permit the court to decline to exercise supplemental jurisdiction under certain circumstances. (*Id.* at 4).

Given Plaintiff's opportunity to correct the defects in his original complaint, the Magistrate Judge recommended Plaintiff's federal claims be dismissed with prejudice and without leave for further amendment, while his state law claims be dismissed without prejudice. (*Id.*)

B. Plaintiff's Objections

Plaintiff objected to both Report I (ECF No. 18) and Report II (ECF No. 30). Plaintiff objects to the denial of his Motion for Summary Judgment on the following grounds: First, Plaintiff alleges the denial of his Motion for Summary Judgment was improper, because it should instead have been "rejected or deleted for [being] premature." (ECF No. 18 at 7.) Second, Plaintiff claims his Motion for Summary Judgment should have been granted, because the evidence submitted conclusively proves all issues of material fact. (*Id.* at 7-8.) The court addresses these objections in turn.

Plaintiff's objection on the issue of prematurity appears to arise from a misunderstanding of this court's procedures. Plaintiff is advised that there is no difference between a rejection, denial

or deletion of a Motion for Summary Judgment.⁴ The Magistrate Judge recommended Plaintiff's Motion be denied as premature, because at the time, Plaintiff had not received authorization to serve his Complaint upon the Defendants.. (ECF No. 16 at 3.)

The United States Court of Appeals for the Fourth Circuit emphasized the importance of permitting all parties adequate time for discovery before summary judgment motions can be considered. *McCray v. Maryland Dep't of Transp., Maryland Transit Admin.*, 741 F.3d 480, 483 (4th Cir. 2014) ("Summary judgment *before* discovery forces the non-moving party into a fencing match without a sword or mask."). The court cannot consider a plaintiff's motion for summary judgment when the defendant has not appeared in the case. *See, e.g., Nat'l Liab. & Fire Ins. Co. v. Matt's Auto World Preowned Cars, LLC*, No. 3:14-CV-38, 2014 WL 5449677, at *2 (N.D.W. Va. Oct. 24, 2014) (denying summary judgment where discovery had not only not begun, "but the Defendants ha[d] not even appeared."). Regardless of any documentary proof supplied by Plaintiff, the procedures of this court require it to afford each party an opportunity to be heard. Therefore, it cannot consider a motion for summary judgment filed before Defendants have notice of the underlying dispute and an opportunity to respond to Plaintiff's allegations. Due to Plaintiff's *pro se* status, the court clarifies that despite the dismissal of Plaintiff's Motion for Summary Judgment as premature at this stage of litigation, Plaintiff remains at liberty to re-file his Motion once his Complaint is accepted and Defendants are properly served. Therefore, Plaintiff's Objection (ECF No. 18) on this ground is denied, and the court accepts Report I's recommendation that Plaintiff's Motion for Summary Judgment (ECF No. 15) be denied as premature.

⁴ When the court cannot grant a Motion for Summary Judgment at a certain stage of the litigation, the proper terminology is that the Motion is denied. This does not mean that a plaintiff cannot re-file his motion at the proper time.

Plaintiff objects to Report II on two grounds. First, Plaintiff alleges he “did not abandon any federal claims.” (ECF No. 30 at 10). Plaintiff explains the claims in his Amended Complaint arise under the “federal common law [of] fraud,” and reiterates his claims under the Fair Credit Report[ing] Act and other federal statutes pleaded in his original Complaint. (*Id.*) Plaintiff also argues the court must specify the federal claims it seeks to dismiss from the case. (*Id.* at 11.) Finally, Plaintiff objects that Defendants are diverse because “Allwell from [Absolute Total Care], Upstate Carolina Radiology, and Thomas Stephens are citizens of the [State of] South Carolina [] and Receivable [M]anagement Group is a citizen of the State of Georgia.” (*Id.* at 12.)

Plaintiff’s first objection misunderstands the nature of his common law claims. Under *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938), federal courts must apply state substantive law in diversity cases. *Erie* effectively eliminated the federal substantive common law, including the common law causes of action alleged by Plaintiff. *See, e.g.*, ERWIN CHEMERINSKI, FEDERAL JURISDICTION 350 (7th ed. 2016). Under the *Erie* principle, “unless there is a federal constitutional, treaty, or statutory provision, state law controls all transactions.” *Id.* Plaintiff’s Amended Complaint alleges no such federal provision for his common law fraud claim. Therefore, Plaintiff’s objection on this ground is denied because his substantive causes of action, including his common law fraud claim, arise under state law.

Plaintiff also misunderstands the purpose of his Amended Complaint. Confusingly, Plaintiff appears to accept “once an amended pleading is interposed, the original pleading no longer performs any function in the case.” (ECF No. 30 at 10 (citing 6 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1476 (3d.ed. 2017).) Therefore, Plaintiff cannot refer to his original Complaint to revive the federal claims which he failed to list in his Amended Complaint.

Even if these claims are considered, they cannot survive. The court notes that in his lengthy discussion of various causes of action under state law in his Objection to Report II, Plaintiff refers to violations of federal statutes, including the FDCPA (ECF No. 30 at 24), the FCRA (*Id.* at 10), and the Medicare Act (*Id.* at 6).⁵ As the Magistrate Judge explained at length, however, the Medicare and Medicaid Acts do not authorize enforcement through private causes of action. (ECF No. 20 at 5-7.) While a private cause of action exists under the FCRA and FDCPA, Plaintiff still has the responsibility of alleging how Defendants, through specific acts, violated these statutes (ECF No. 20 at 5-7.) Plaintiff's Amended Complaint, Objection to Report I, and Objection to Report II fail to address these deficiencies, and do not plead specific, cognizable claims under federal statutes which provide private causes of action. Therefore, Plaintiff's federal claims are dismissed. However, in light of Plaintiff's *pro se* status and misunderstanding of the nature of federal causes of action, the court will dismiss his federal claims under the FDCPA and FCRA without prejudice.⁶

Finally, Plaintiff's discussion of diversity jurisdiction demonstrates his misunderstanding of the requirements of complete diversity under 28 U.S.C. § 1332(a). Plaintiff appears to object that he established complete diversity because one defendant, Receivable Management Group, is a citizen of Georgia. (ECF No. 30 at 12.) However, complete diversity under § 1332(a) requires that no plaintiff be a citizen of the same state as any defendant. *Navy Fed. Credit Union v. LTD*

⁵ Plaintiff also attempts to state various causes of action under federal criminal statutes and allege Defendants' conduct violated various criminal laws. (*See, e.g.*, ECF No. 30 at 14.) Plaintiff is advised that this is a civil action, and private parties may not bring suit under criminal statutes.

⁶ Because the Medicare and Medicaid Acts provide no private cause of action (ECF No. 20 at 4), Plaintiff cannot state a cognizable claim for relief under these provisions. *See e.g., Brogdon v. Nat'l Healthcare Corp.*, 103 F. Supp. 2d 1322, 1340 (N.D. Ga. 2000) (The Medicare and Medicaid Acts do not expressly or implicitly "authorize private causes of action to enforce their provisions.") Therefore, these causes of action are dismissed with prejudice.

Fin. Servs., LP, 972 F.3d 344, 352 (4th Cir. 2020). Here, Plaintiff claims he is a citizen of South Carolina (ECF No. 23 at 3), and Defendants Allwell, Stephens, and Upstate Carolina Radiology are also citizens of South Carolina. (ECF No. 30 at 12.) Therefore, because Plaintiff shares citizenship with at least one defendant, the complete diversity requirement of § 1332(a) is not satisfied.

A federal district court may exercise jurisdiction over two classes of cases: those “that “aris[e] under” federal law, § 1331, and those in which the amount in controversy exceeds \$ 75,000 and there is diversity of citizenship among the parties, § 1332(a).” *Home Depot U. S. A., Inc. v. Jackson*, 139 S. Ct. 1743, 1746, *reh’g denied*, 140 S. Ct. 17 (2019). The first class of cases falls under the “federal-question jurisdiction” of the federal courts. *Id.* The second class of cases falls under its “diversity jurisdiction.” *Id.*

As discussed, Plaintiff failed to plead a sufficient factual basis for his federal claims in his numerous filings with the court. Moreover, Plaintiff’s allegations demonstrate Defendants do not meet the requirements of complete diversity under §1332(a) (ECF No. 30 at 12.) Therefore, the court has no original jurisdiction over Plaintiff’s Amended Complaint as pleaded, and cannot consider his supplemental state law claims. Plaintiff’s objection on this ground is thus denied. The court accepts the Magistrate Judge’s recommendation that Plaintiff’s Amended Complaint be dismissed. However, due to Plaintiff’s *pro se* status, the court dismisses his state law claims and federal law claims under the FDCPA and FCRA without prejudice.

IV. CONCLUSION

For the reasons above, the court **ACCEPTS** the Magistrate Judge’s Report and Recommendation (ECF No. 16) and **DENIES** Plaintiff’s Motion for Summary Judgment (ECF No. 15) as premature. Moreover, the court **ACCEPTS** the Magistrate Judge’s Report and

Recommendation (ECF No. 27) and **DISMISSES** the federal law claims under the FDCPA and FCRA and all state law claims in Plaintiff's Amended Complaint (ECF No. 23) without prejudice.⁷

IT IS SO ORDERED.

J. Michelle Childs

United States District Judge

September 17, 2021
Columbia, South Carolina

⁷ All other federal claims in Plaintiff's Complaint, Amended Complaint, and Objections to Report I and Report II are dismissed with prejudice. *= against the Rule 41(a)(2)*

AO 450 (SCD 04/2010) Judgment in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of South Carolina

Israel Romero

Plaintiff

v.

Allwell from Absolute Total Care, Thomas Stephens

Defendant

)

)

)

)

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Civil Action No. 7:20-cv-4344-JMC

JUDGMENT IN A CIVIL ACTION

The court has ordered that *(check one)*:

☒ other: the court **ACCEPTS** the Magistrate Judge's Report and Recommendation and **DENIES** Plaintiff's Motion for Summary Judgment as premature. Moreover, the court **ACCEPTS** the Magistrate Judge's Report and Recommendation and **DISMISSES** the federal law claims under the FDCPA and FCRA and all state law claims in Plaintiff's Amended Complaint without prejudice.

This action was *(check one)*:

☒ decided by the Honorable J. Michelle Childs.

Date: September 17, 2021

CLERK OF COURT

s/Angela Lewis, Deputy Clerk

Signature of Clerk or Deputy Clerk

APPENDIX C

REPORT AND RECOMMENDATION FROM THE MAGISTRATE
JUDGE FILED ON 03/25/2021 RECOMMENDING THAT THE ACTION
(ECF 1) BE DISMISSED WITH PREJUDICE AND WITHOUT LEAVE
FOR FURTHER AMENDMENT

CIVIL CASE No. 7:20-cv-04344-JMC

Other Orders/Judgments7:20-cv-04344-JMC-KFMRomero v. Allwell from AbsoluteTotal Care et al

PRIOR,PROSE

U.S. District Court

District of South Carolina

Notice of Electronic Filing

The following transaction was entered on 3/25/2021 at 3:03 PM EDT and filed on 3/25/2021

Case Name: Romero v. Allwell from Absolute Total Care et al**Case Number:** 7:20-cv-04344-JMC**Filer:****Document Number:** 27**Docket Text:****REPORT AND RECOMMENDATION. It is recommended that the action be dismissed with prejudice and without leave for further amendment. Signed by Magistrate Judge Kevin McDonald on 3/25/2021. (kric,)**

7:20-cv-04344-JMC Notice has been electronically mailed to:

Jonathan Edward Schulz jschulz@bradley.com, chester@BRADLEY.COM

7:20-cv-04344-JMC Notice will not be electronically mailed to:

Israel Romero
937-B S Liberty Street
Spartanburg, SC 29306

The following document(s) are associated with this transaction:

Document description:Main Document**Original filename:**n/a**Electronic document Stamp:**

[STAMP dcecfStamp_ID=1091130295 [Date=3/25/2021] [FileNumber=10113883-0] [6b25ff6b1effa419d09e24e445bc079a134f1acd623648101f6efa847ec3b4b0df053748f5534d4c69da867ea87cba2a5alc7d8d1666fadf440fa7bba611693]]

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

Israel Romero,

Plaintiff,

vs.

Allwell from Absolute Total Care,
Thomas Stephens,

Defendants.¹

C/A No. 7:20-cv-04344-JMC-KFM

REPORT OF MAGISTRATE JUDGE

The plaintiff, a non-prisoner proceeding *pro se* and *in forma pauperis*, brings this action seeking damages from the defendants. Pursuant to the provisions of 28 U.S.C. § 636(b), and Local Civil Rule 73.02(B)(2) (D.S.C.), this magistrate judge is authorized to review all pretrial matters in this case and submit findings and recommendations to the district court.

The plaintiff's case was entered on the docket on December 15, 2020 (doc. 1). On February 18, 2021, the undersigned issued an order informing the plaintiff that his complaint was subject to dismissal as drafted and providing him with time to file an amended complaint to correct the deficiencies noted in the order (doc. 20). The plaintiff was informed that if he failed to file an amended complaint or otherwise cure the deficiencies outlined in the order, the undersigned would recommend that his case be dismissed (*id.* at 10–11). On March 4, 2021, the plaintiff's amended complaint was entered on the docket (doc. 23). However, because the plaintiff's amended complaint likewise fails to state a federal claim for relief, the undersigned recommends dismissal of the case.

¹ This caption represents the current parties to this action, in accordance with the plaintiff's amended complaint (doc. 23).

ALLEGATIONS

The plaintiff alleges that he obtained a supplemental medicare insurance plan from Allwell from Absolute Total Care ("Allwell"), which was supposed to provide certain medical benefits (doc. 23 at 4–6). He contends that Allwell, through its representative Mr. Stephens, enticed him to purchase its insurance plan despite the plaintiff's enrollment in both Medicare and Medicaid (*id.* at 4–5). The plaintiff relied on the defendants' representations of coverage and enrolled in Allwell (*id.* at 5, 6–7). The plaintiff contends that he then began receiving bills for medical care from various providers despite the assurances from Allwell that he would not have to pay anything out of pocket (*id.* at 5–6).

The plaintiff's first cause of action alleges fraud (*id.* at 8–11). The plaintiff's next cause of action alleges unfair and deceptive trade practices under the South Carolina Unfair Trade Practices Act ("SCUTPA") (*id.* at 12–13). For relief, the plaintiff seeks money damages (*id.* at 14).

STANDARD OF REVIEW

The plaintiff filed this action pursuant to 28 U.S.C. § 1915, the *in forma pauperis* statute. This statute authorizes the District Court to dismiss a case if it is satisfied that the action "fails to state a claim on which relief may be granted," is "frivolous or malicious," or "seeks monetary relief against a Defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B). As a *pro se* litigant, the plaintiff's pleadings are accorded liberal construction and held to a less stringent standard than formal pleadings drafted by attorneys. See *Erickson v. Pardus*, 551 U.S. 89 (2007) (*per curiam*). The requirement of liberal construction does not mean that the Court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. See *Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 391 (4th Cir. 1990).

DISCUSSION

As noted above, the plaintiff filed the instant action seeking damages from the defendants. However, the plaintiff's amended complaint fails to state a federal claim for relief, only alleging state law claims for fraud and unfair trade practice under SCUTPA (doc. 23).

Abandoned Claims

As an initial matter, although the plaintiff alleges federal question jurisdiction in his amended complaint, it appears that he has abandoned his federal claims (see doc. 23). The plaintiff's amended complaint does not reference the Medicare Act, the Medicaid Act, the Fair Debt Collection Practices Act ("FDCPA"), or the Fair Credit Reporting Act ("FCRA") (see *id.*). Indeed, the plaintiff's amended complaint also abandons some of his state law claims, asserting only two causes of action (both grounded in state law): fraud and unfair trade practices under SCUTPA (*id.* at 8–13). The plaintiff was warned that an amended complaint replaces the complaint and "should be complete in itself (doc. 20 at 11 (citing *Young v. City of Mount Ranier*, 238 F.3d 567, 572 (4th Cir. 2001))). As such, the undersigned recommends dismissal of the plaintiff's abandoned claims. To the extent the plaintiff did not intend to abandon the abandoned claims, for the reasons set forth in the court's prior order, the claims would still be subject to summary dismissal (see doc. 20 at 4–7).

South Carolina State Law Claims

With respect to the two claims remaining in this action, the plaintiff's state law fraud and SCUTPA claims, the court should abstain from exercising jurisdiction over them. Such claims can be considered by this court through the exercise of "supplemental jurisdiction," which allows federal courts to hear and decide state law claims along with federal claims. *Wisconsin Dep't of Corrections v. Schacht*, 524 U.S. 381, 387 (1998); 28 U.S.C. § 1367. However, federal courts are permitted to decline supplemental jurisdiction

pursuant to 28 U.S.C. § 1367(c)(3) if “the district court has dismissed all claims over which it has original jurisdiction.” As noted above, although the plaintiff alleges federal question jurisdiction, the plaintiff’s amended complaint abandons his federal claims.² Moreover, even if not abandoned, for the reasons stated in the court’s order dated February 18, 2021, the plaintiff’s federal claims are subject to summary dismissal (doc. 20 at 4–7). Thus, this court should decline to exercise supplemental jurisdiction over the plaintiff’s state law claims under 28 U.S.C. § 1367(c)(3). See *Lovern v. Edwards*, 190 F.3d 648, 655 (4th Cir. 1999) (“[T]he Constitution does not contemplate the federal judiciary deciding issues of state law among non-diverse litigants.”).

RECOMMENDATION

By order issued February 18, 2021, the undersigned gave the plaintiff an opportunity to correct the defects identified in his complaint and further warned the plaintiff that if he failed to file an amended complaint or failed to cure the identified deficiencies, the undersigned would recommend to the district court that the action be dismissed *with prejudice* and without leave for further amendment (doc. 20). In response to the order, the plaintiff filed an amended complaint, abandoning several claims (see doc. 23). As such, the undersigned recommends that the district court decline to give the plaintiff further leave to amend his complaint and dismiss this action as follows: the federal law claims *with prejudice* and the state law claims *without prejudice* and without issuance and service of process. See *Workman v. Morrison Healthcare*, 724 F. App’x 280, 281 (4th Cir. 2018) (in a case where the district court had already afforded the plaintiff an opportunity to amend, the district court was directed on remand to “in its discretion, either afford [the plaintiff]

² The plaintiff does not allege diversity jurisdiction and asserts that he and the defendants are all residents of South Carolina; thus, there is no basis for diversity jurisdiction in this action. See 28 U.S.C. § 1332.

another opportunity to file an amended complaint or dismiss the complaint with prejudice, thereby rendering the dismissal order a final, appealable order”) (citing *Goode v. Cent. Va. Legal Aid Soc’y, Inc.*, 807 F.3d 619, 630 (4th Cir. 2015)); see also *Bing v. Brivo Sys., LLC*, 959 F.3d 605 (4th Cir. 2020). **The attention of the parties is directed to the important notice on the following page.**

IT IS SO RECOMMENDED.

s/Kevin F. McDonald
United States Magistrate Judge

March 25, 2021
Greenville, South Carolina

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. "[I]n 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 & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committees note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
300 East Washington Street, Room 239
Greenville, South Carolina 29601

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

APPENDIX D

REPORT AND RECOMMENDATION FROM THE MAGISTRATE
JUDGE FILED ON 01/28/2021 RECOMMENDING THAT THE
PETITIONER'S MOTION FOR SUMMARY JUDGEMENT (ECF 15) BE
DENIED AS PREMATURE

CIVIL CASE No. 7:20-CV-04344-JMC

Other Orders/Judgments7:20-cv-04344-JMC-KFMRomero v. Allwell from AbsoluteTotal Care et al

PRIOR, PROSE

U.S. District Court

District of South Carolina

Notice of Electronic Filing

The following transaction was entered on 1/28/2021 at 1:55 PM EST and filed on 1/28/2021

Case Name: Romero v. Allwell from Absolute Total Care et al**Case Number:** 7:20-cv-04344-JMC-KFM**Filer:****Document Number:** 16**Docket Text:**

REPORT AND RECOMMENDATION re [15] MOTION for Summary Judgment filed by Israel Romero. It is recommended that the plaintiff's motion for summary judgment (doc. 15) be denied as premature. Objections to R&R due by 2/11/2021 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. Signed by Magistrate Judge Kevin McDonald on 1/28/2021. (kric,)

7:20-cv-04344-JMC-KFM Notice has been electronically mailed to:

Jonathan Edward Schulz jschulz@bradley.com, chester@BRADLEY.COM

7:20-cv-04344-JMC-KFM Notice will not be electronically mailed to:

Israel Romero
937-B S Liberty Street
Spartanburg, SC 29306

The following document(s) are associated with this transaction:

Document description:Main Document**Original filename:**n/a**Electronic document Stamp:**

[STAMP dcecfStamp_ID=1091130295 [Date=1/28/2021] [FileNumber=10025367-0] [88e06a90f376173035433f85594b61e159d2130c1754a6326d92f8fc992745db13f02c4d82c809a2d0baf288a28646ce332810de6dd4b645ff2fdb231af3b20]]

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

Israel Romero,

Plaintiff,

vs.

Allwell from Absolute Total Care,
Upstate Carolina Radiology, PA,
Receivable Management Group,

Defendants.

C/A No. 7:20-cv-04344-JMC-KFM

REPORT OF MAGISTRATE JUDGE

This matter is before the court on a motion for summary judgment filed by the plaintiff (doc. 15). The plaintiff, proceeding *pro se* and *in forma pauperis*, brought this action seeking damages from the defendants. Pursuant to the provisions of 28 U.S.C. § 636(b), and Local Civil Rule 73.02(B)(2) (D.S.C.), this magistrate judge is authorized to review all pretrial matters in this case and submit findings and recommendations to the district court.

PROCEDURAL HISTORY

On December 15, 2020, the plaintiff filed the instant action, seeking damages from the defendants (doc. 1). On January 6, 2021, the undersigned issued an order informing the plaintiff that his case was not in proper form for review and instructing him to submit certain documents to bring his case into proper form (doc. 8). During this same time, defendant Allwell from Absolute Total Care filed an answer to the complaint, which was deleted from the docket as premature, as the case was not in proper form and service had not been authorized (docs. 8 at 1; 11). The plaintiff thereafter filed proposed documents to bring his case into proper form on January 12, 2021, and January 19, 2021 (docs. 12; 13), but then filed a motion for summary judgment (doc. 15), even though this

court has not yet ruled on whether the plaintiff has complied with the proper form order of January 6, 2021.

APPLICABLE LAW & ANALYSIS

The plaintiff filed this action pursuant to 28 U.S.C. § 1915, the *in forma pauperis* statute. This statute authorizes the District Court to dismiss a case if it is satisfied that the action "fails to state a claim on which relief may be granted," is "frivolous or malicious," or "seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B). As a *pro se* litigant, the plaintiff's pleadings are accorded liberal construction and held to a less stringent standard than formal pleadings drafted by attorneys. See *Erickson v. Pardus*, 551 U.S. 89 (2007) (*per curiam*). The requirement of liberal construction does not mean that the Court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. See *Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 391 (4th Cir. 1990).

Federal Rule of Civil Procedure 56 states, as to a party who has moved for summary judgment: "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). As to the first of these determinations, a fact is deemed "material" if proof of its existence or nonexistence would affect the disposition of the case under the applicable law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). An issue of material fact is "genuine" if the evidence offered is such that a reasonable jury might return a verdict for the non-movant. *Id.* at 257. In determining whether a genuine issue has been raised, the court must construe all inferences and ambiguities against the movant and in favor of the non-moving party. *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962).

The party seeking summary judgment shoulders the initial burden of demonstrating to the district court that there is no genuine issue of material fact. *Celotex*

Corp. v. Catrett, 477 U.S. 317, 325 (1986). Once the movant has made this threshold demonstration, the non-moving party, to survive the motion for summary judgment, may not rest on the allegations averred in his pleadings; rather, he must demonstrate that specific, material facts exist that give rise to a genuine issue. *Id.* at 324. Under this standard, the existence of a mere scintilla of evidence in support of the plaintiff's position is insufficient to withstand the summary judgment motion. *Anderson*, 477 U.S. at 252. Likewise, conclusory allegations or denials, without more, are insufficient to preclude the granting of the summary judgment motion. *Ross v. Communications Satellite Corp.*, 759 F.2d 355, 365 (4th Cir. 1985), *overruled on other grounds*, 490 U.S. 228 (1989). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." *Anderson*, 477 U.S. at 248.

Here, as noted, the plaintiff has a filed a motion for summary judgment (doc. 15). However, at this time, service of the complaint has not yet been authorized. Indeed, initial review of the plaintiff's case pursuant to 28 U.S.C. § 1915 remains ongoing. As such, because the court is reviewing the plaintiff's complaint pursuant to 28 U.S.C. § 1915, the plaintiff's motion for summary judgment should be denied as premature.

RECOMMENDATION

Now, therefore, based upon the foregoing,

IT IS RECOMMENDED that the plaintiff's motion for summary judgment (doc. 15) be **denied as premature**.

IT IS SO RECOMMENDED.

s/Kevin F. McDonald
United States Magistrate Judge

January 28, 2021
Greenville, South Carolina

The attention of the parties is directed to the important notice on the following page.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. "[I]n 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 & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committees note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
300 East Washington Street, Room 239
Greenville, South Carolina 29601

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

APPENDIX E

REPORT AND RECOMMENDATION AND ORDER FROM THE
MAGISTRATE JUDGE FILED ON 01/06/21 DIRECTING THE CLERK
OF THE COURT TO DELETE THE ANSWER FROM DEFENDANT
ALLWELL FROM ABSOLUTE TOTAL CARE; GRANTING THE
PETITIONER'S MOTION TO PROCEED *IN FORMA PAUPERIS*; AND
ORDERED THE PETITIONER TO AMEND THE COMPLAINT

CIVIL CASE No. 7:20-CV-04344-JMC

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

Israel Romero,

Plaintiff,

vs.

Allwell from Absolute Total Care,
Upstate Carolina Radiology, PA,
Receivable Management Group,

Defendants.

C/A No. 7:20-cv-04344-JMC-KFM

ORDER

This is a civil action filed by a *pro se* non-prisoner. Under Local Civil Rule 73.02(B)(2) of the United States District Court for the District of South Carolina, pretrial proceedings in this action have been referred to the assigned United States Magistrate Judge.

TO THE DEFENDANTS:

On January 5, 2021, defendant Allwell from Absolute Total Care filed an answer to the plaintiff's complaint in this case (doc. 6). However, initial review of this case is required pursuant to 28 U.S.C. § 1915 before service can be authorized. As such, the Clerk of Court is directed to delete the defendant's answer from the record as premature because the court has not yet issued a summons and at this time **no answers or responsive pleadings** are due. Once review of the complaint has been completed by the court, the court will issue an order setting the appropriate responsive pleading deadlines.

PAYMENT OF THE FILING FEE:

The plaintiff has submitted an Application to Proceed Without Prepayment of Fees and Affidavit (Form AO 240), which the court construes as a motion for leave to proceed *in forma pauperis* (doc. 4). See 28 U.S.C. § 1915(a)(1), (2). A review of the motion indicates that the plaintiff does not presently have sufficient discretionary income to prepay the full filing fee. The plaintiff's motion for leave to proceed *in forma pauperis* (doc. 3) is therefore **granted**, subject to the court's right to require a payment if the plaintiff's financial condition changes, and to tax fees and costs against the plaintiff at the conclusion of this case if the court finds the case to be without merit. See *Flint v. Haynes*, 651 F.2d 970, 972-74 (4th Cir. 1981).

TO THE PLAINTIFF:

The plaintiff is specifically informed that his case is subject to initial review pursuant to 28 U.S.C. § 1915. As such, the complaint in this case can only be served after the case has been brought into proper form and initial review has been completed. The plaintiff is instructed that prior to the court issuing a summons or service being authorized, no documents may be served or delivered to the defendants regarding this action. **If the**

plaintiff does not bring this case into proper form within the time permitted by this Order, this case may be dismissed for failure to prosecute and failure to comply with an order of this Court under Rule 41 of the Federal Rules of Civil Procedure.

Under General Order *In Re: Procedures in Civil Actions Filed by Non-Prisoner Pro Se Litigants*, C/A No. 3:07-mc-5015-JFA (D.S.C. Sept. 18, 2007), the undersigned is giving the plaintiff **twenty-one (21) days** from the date this order is entered (plus three days for mail time) to:

1) Complete one summons form which lists every defendant named in this matter. In the space following "TO: (The defendant's name and address)," the plaintiff is required to provide a complete name and a full address where the defendants can be served pursuant to Rule 4 of the Federal Rules of Civil Procedure. **The plaintiff's complete name and full address must be provided in the blank section following "plaintiff or plaintiff's attorney, whose name and address are."** Handwritten information must be printed and legible. **Nothing else should be written by the plaintiff on either the front or back of the summons or in the margins.** If it is necessary to list additional defendants whose names and street addresses do not fit in the space on the summons form preceded by "TO: (Name and address of the defendant)," the plaintiff must attach an additional page of letter-sized (8½ inches by 11 inches) paper listing additional defendants and service addresses. **Blank forms are attached for the plaintiff's use.**

2) Complete, sign, and return a Form USM-285 for each defendant listed in this case. **Only one Defendant's name and street address should appear on each form.** The defendant's name and **street** address should be placed in the spaces preceded by the words, "SERVE AT." The plaintiff's name and address should be placed in the space designated, "SEND NOTICE OF SERVICE COPY TO . . .," and the plaintiff should sign where the form requests, "Signature of Attorney or other Originator" The plaintiff must provide the defendant's complete **street** address on the form (not a post office box address). The plaintiff must provide, and is responsible for, information sufficient to identify the defendant(s) on the Form(s) USM-285. The United States Marshal cannot serve an inadequately identified defendant, and unserved defendants may be dismissed as parties to this case. **Blank forms are attached for the plaintiff's use.**

No process shall issue until the items specified above have been reviewed by the assigned Magistrate Judge.

The plaintiff must place the civil action number listed above C/A No. 7:20-cv-04344-JMC-KFM) on any document provided to the Court pursuant to this Order. **Any future filings in this case must be sent to the address below: (300 East Washington Street, Room 239, Greenville, South Carolina 29601).** Any future filings in this case must be sent to the Clerk's Office in Greenville (300 East Washington Street, Room 239, Greenville, South Carolina 29601). All documents requiring the plaintiff's signature shall be signed with the plaintiff's full legal name written in the plaintiff's own handwriting. *Pro se* litigants shall not use the "s/typed name" format used in the Electronic Case Filing System. In all future filings with this Court, the plaintiff is directed to use letter-sized (8½ inches by 11 inches) paper only, to write or type text on one side of a sheet of paper only, and not to write or type on both sides of any sheet of paper. The plaintiff is further instructed not to write to the edge of the paper, but to maintain one inch margins on the top, bottom, and sides of each paper submitted.

The plaintiff is a *pro se* litigant. The plaintiff's attention is directed to the following important notice:

You are ordered to always keep the Clerk of Court advised in writing (300 East Washington Street, Room 239, Greenville, South Carolina 29601) if your address changes for any reason, so as to assure that orders or other matters that specify deadlines for you to meet will be received by you. If as a result of your failure to comply with this order, you fail to meet a deadline set by this Court, your case may be dismissed for violating this order. Therefore, if you have a change of address before this case is ended, you must comply with this order by immediately advising the Clerk of Court in writing of such change of address and providing the Court with the docket number of all pending cases you have filed with this Court. Your failure to do so will not be excused by the Court.

TO THE CLERK OF COURT:

The Clerk of Court shall mail a copy of this order and the proper form documents to the plaintiff. If the plaintiff fails to provide the items specified above to the Clerk of Court within the period prescribed in this order, the Clerk of Court shall forward the file to the assigned United States District Judge to determine whether to enter an order of dismissal. See *In Re: Procedures in Civil Actions Filed by Non-Prisoner Pro Se Litigants*, C/A No. 3:07-mc-5015-JFA. If, however, the plaintiff provides this Court with the items specified above, the Clerk of Court should forward the file to the assigned Magistrate Judge to determine if service of process should be authorized.

The Clerk of Court is instructed to ensure that a copy of this order is served upon counsel for defendant Allwell from Absolute Total Care through the Court's Electronic Case Filing system.

The Clerk of Court shall not enter any change of address submitted by the plaintiff which directs that mail be sent to a person other than the plaintiff unless that person is an attorney admitted to practice before this Court who has entered a formal appearance.

The plaintiff's attention is directed to the important WARNING on the following page.

IT IS SO ORDERED.

s/ Kevin F. McDonald
United States Magistrate Judge

January 6, 2021
Greenville, South Carolina

**IMPORTANT INFORMATION . . . PLEASE READ CAREFULLY
WARNING TO PRO SE PARTY OR NONPARTY FILERS**

ALL DOCUMENTS THAT YOU FILE WITH THE COURT WILL BE AVAILABLE TO THE PUBLIC ON THE INTERNET THROUGH PACER (PUBLIC ACCESS TO COURT ELECTRONIC RECORDS) AND THE COURT'S ELECTRONIC CASE FILING SYSTEM. **CERTAIN PERSONAL IDENTIFYING INFORMATION SHOULD NOT BE INCLUDED IN, OR SHOULD BE REMOVED FROM, ALL DOCUMENTS BEFORE YOU SUBMIT THE DOCUMENTS TO THE COURT FOR FILING.**

Rule 5.2 of the Federal Rules of Civil Procedure provides for privacy protection of electronic or paper filings made with the court. Rule 5.2 applies to **ALL** documents submitted for filing, including pleadings, exhibits to pleadings, discovery responses, and any other document submitted by any party or nonparty for filing. Unless otherwise ordered by the court, a party or nonparty filer should not put certain types of an individual's personal identifying information in documents submitted for filing to any United States District Court. If it is necessary to file a document that already contains personal identifying information, the personal identifying information should be "**blacked out**" or **redacted** prior to submitting the document to the Clerk of Court for filing. A person filing any document containing their own personal identifying information **waives** the protection of Rule 5.2(a) by filing the information without redaction and not under seal.

1. Personal information protected by Rule 5.2(a):

(a) Social Security and Taxpayer Identification numbers. If an individual's social security number or a taxpayer identification number must be included in a document, the filer may include only the last four digits of that number.

(b) Names of Minor Children. If the involvement of a minor child must be mentioned, the filer may include only the initials of that child.

(c) Dates of Birth. If an individual's date of birth must be included in a document, the filer may include only the year of birth.

(d) Financial Account Numbers. If financial account numbers are relevant, the filer may include only the last four digits of these numbers.

2. Protection of other sensitive personal information – such as driver's license numbers and alien registration numbers – may be sought under Rule 5.2(d) (filings made under seal) and (e) (protective orders).

APPENDIX F

CIVIL OFFICIAL DOCKET FOR PETITIONER'S CASE # 7:20-CV-04344-JMC, SHOWING JURISDICTION: FEDERAL QUESTION.
PLEASE TAKE NOTICE THAT ELEVEN (11) ENTRIES ARE MISSING
FROM THE TOTAL 35 ENTRIES IN THE DOCKET

CIVIL CASE No. 7:20-CV-04344-JMC

APPEAL,CLOSED,PRIOR,PROSE

U.S. District Court
District of South Carolina (Spartanburg)
CIVIL DOCKET FOR CASE #: 7:20-cv-04344-JMC

Romero v. Allwell from Absolute Total Care et al
Assigned to: Honorable J Michelle Childs
Cause: 15:1691 Equal Credit Opportunity Act

Date Filed: 12/15/2020
Date Terminated: 09/17/2021
Jury Demand: Defendant
Nature of Suit: 370 Other Fraud
Jurisdiction: Federal Question

Plaintiff**Israel Romero**

represented by **Israel Romero**
937-B S Liberty Street
Spartanburg, SC 29306
PRO SE

V.

Defendant**Allwell from Absolute Total Care**

represented by **Jonathan Edward Schulz**
Bradley Arant Boult Cummings LLP
Truist Center
214 North Tryon Street
Suite 3700
Charlotte, NC 28202
704-338-6127
Fax: 704-332-8858
Email: jschulz@bradley.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Upstate Carolina Radiology, PA
TERMINATED: 03/08/2021

Defendant

Receivable Management Group
TERMINATED: 03/08/2021

Defendant

Thomas Stephens
Sales Representative Medicare Sales

Date Filed	#	Docket Text
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12/15/2020	<u>1</u>	COMPLAINT against All Defendants, filed by Israel Romero. Service due by 3/15/2021(kric,) (Entered: 12/16/2020)
12/15/2020	<u>3</u>	Local Rule 26.01 Answers to Interrogatories by Israel Romero.(kric,) (Entered: 12/16/2020)
12/15/2020	<u>4</u>	MOTION for Leave to Proceed in forma pauperis (Restricted Access) by Israel Romero. Response to Motion due by 12/29/2020. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. No proposed order.Motions referred to Kevin McDonald.(kric,) (Entered: 12/16/2020)
01/06/2021	<u>8</u>	PROPER FORM ORDER directing the clerk to delete the defendant's answer (ECF Doc 6) from the record as premature; granting Plaintiff's <u>4</u> MOTION for Leave to Proceed in forma pauperis and directing Plaintiff to notify the clerk in writing of any change of address. Case to be brought into proper form by 1/27/2021. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. Signed by Magistrate Judge Kevin McDonald on 1/6/21. (kmca) (Entered: 01/06/2021)
01/06/2021	<u>9</u>	TEXT ORDER granting <u>4</u> Motion for Leave to Proceed in forma pauperis per <u>8</u> Proper Form Order. Entered at the direction of Magistrate Judge Kevin McDonald on 1/6/21.(kmca) (Entered: 01/06/2021)
01/06/2021	<u>10</u>	***DOCUMENT MAILED <u>8</u> Proper Form Order with summons and 3 USM-285 forms, <u>9</u> Order on Motion for Leave to Proceed in forma pauperis, placed in U.S. Mail from Greenville Clerks Office to Israel Romero, 937-B S Liberty Street, Spartanburg, SC 29306. (kmca) (Entered: 01/06/2021)
01/06/2021	<u>11</u>	DELETION OF DOCKET ENTRY NUMBER #6 Answer. Reason: premature, as directed by the court (ECF Doc <u>8</u>). (kmca) (Entered: 01/06/2021)
01/27/2021	<u>15</u>	MOTION for Summary Judgment by Israel Romero. Response to Motion due by 2/10/2021. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # <u>1</u> Order Filed on 1/6/2021, # <u>2</u> Attachments to Supporting Memoranda Total of 10 pages, # <u>3</u> Attachment to Supporting Memoranda Total 4 pages, # <u>4</u> Attachment to Memoranda Total 2 pages, # <u>5</u> Certificate of Service, # <u>6</u> Envelope)No proposed order.Motions referred to Kevin McDonald.(kric,) (Entered: 01/27/2021)
01/28/2021	<u>16</u>	REPORT AND RECOMMENDATION re <u>15</u> MOTION for Summary Judgment filed by Israel Romero. It is recommended that the plaintiff's motion for summary judgment (doc. 15) be denied as premature. Objections to R&R due by 2/11/2021 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. Signed by Magistrate Judge Kevin McDonald on 1/28/2021. (kric,) (Entered: 01/28/2021)
01/28/2021	<u>17</u>	***DOCUMENT MAILED <u>16</u> REPORT AND RECOMMENDATION re <u>15</u> MOTION for Summary Judgment filed by Israel Romero placed in U.S. Mail from Greenville Clerks Office to Israel Romero 937-B S Liberty Street Spartanburg, SC 29306 (kric,) (Entered: 01/28/2021)
02/11/2021	<u>18</u>	OBJECTION to <u>16</u> Report and Recommendation by Israel Romero. Reply to Objections due by 2/25/2021 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. (Attachments: # <u>1</u> Supporting Documents

		medical statements, # <u>2</u> Medical plan handbook, # <u>3</u> Certificate of Service, # <u>4</u> Cover Letter)(kric,) (Entered: 02/11/2021)
02/18/2021	<u>20</u>	ORDER AND AMENDMENT NOTICE. Amended complaint and service documents due by 3/4/2021. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. Signed by Magistrate Judge Kevin McDonald on 2/18/2021. (kric,) (Entered: 02/18/2021)
02/18/2021	21	***DOCUMENT MAILED <u>20</u> Proper Form Order, placed in U.S. Mail from Greenville Clerks Office to Israel Romero 937-B S Liberty Street Spartanburg, SC 29306 with blank amended complaint form, blank summons and 3 USM285 forms (kric,) (Entered: 02/18/2021)
03/04/2021	<u>23</u>	AMENDED COMPLAINT against Allwell from Absolute Total Care, Receivable Management Group, Upstate Carolina Radiology, PA, filed by Israel Romero. Service due by 6/2/2021 (Attachments: # <u>1</u> Attachments) (sgri) (Entered: 03/04/2021)
03/25/2021	<u>26</u>	ORDER directing Clerk not to authorize service and advising plaintiff (or petitioner) to notify Clerk in writing of any change of address. Signed by Magistrate Judge Kevin McDonald on 3/25/2021. (kric,) (Entered: 03/25/2021)
03/25/2021	<u>27</u>	REPORT AND RECOMMENDATION. It is recommended that the action be dismissed with prejudice and without leave for further amendment. Signed by Magistrate Judge Kevin McDonald on 3/25/2021. (kric,) (Entered: 03/25/2021)
03/25/2021	28	***CASE MANAGEMENT TRANSFERRED to civil case manager for Judge J Michelle Childs. Any future filings must be sent to the Clerk's Office at the following address: US District Court 300 East Washington Street, Greenville, SC 29601. (kric,) (Entered: 03/25/2021)
03/25/2021	29	***DOCUMENT MAILED <u>26</u> Order, 28 Transfer of Case Management, <u>27</u> REPORT AND RECOMMENDATION re <u>23</u> Amended Complaint filed by Israel Romero placed in U.S. Mail from Greenville Clerks Office to Israel Romero 937-B S Liberty Street Spartanburg, SC 29306 (kric,) (Entered: 03/25/2021)
04/08/2021	<u>30</u>	OBJECTION to <u>27</u> Report and Recommendation by Israel Romero. Reply to Objections due by 4/22/2021 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. (Attachments: # <u>1</u> Cover Letter, # <u>2</u> Certificate of Service)(alew,) (Entered: 04/09/2021)
09/17/2021	<u>31</u>	ORDER RULING ON REPORT AND RECOMMENDATION denying as premature <u>15</u> Motion for Summary Judgment filed by Israel Romero, accepting <u>16</u> Report and Recommendation, accepting <u>27</u> Report and Recommendation. Signed by Honorable J Michelle Childs on 9/17/21. (alew,) (Entered: 09/17/2021)
09/17/2021	<u>32</u>	JUDGMENT: The court ACCEPTS the Magistrate Judges Report and Recommendation and DENIES Plaintiffs Motion for Summary Judgment as premature. Moreover, the court ACCEPTS the Magistrate Judges Report and Recommendation and DISMISSES the federal law claims under the FDCPA and FCRA and all state law claims in Plaintiffs Amended Complaint without prejudice. (alew,) (Entered: 09/17/2021)
09/17/2021	33	***DOCUMENT MAILED <u>32</u> Judgment, <u>31</u> Order Ruling on Report and Recommendation, placed in U.S. Mail from Greenville Clerks Office to Israel Romero 937-B S Liberty Street Spartanburg, SC 29306. (alew,) (Entered: 09/17/2021)

		09/17/2021)
09/24/2021	<u>34</u>	NOTICE OF APPEAL as to <u>32</u> Judgment, <u>31</u> Order Ruling on Report and Recommendation, by Israel Romero. - Filing fee \$ unpaid. The Docketing Statement form, Transcript Order form and CJA 24 form may be obtained from the Fourth Circuit website at www.ca4.uscourts.gov . (Attachments: # <u>1</u> Cover Page)(alew,) (Entered: 09/24/2021)
09/24/2021	<u>35</u>	Transmittal Sheet for Notice of Appeal to USCA re <u>34</u> Notice of Appeal, The Clerk's Office hereby certifies the record and the docket sheet available through ECF to be the certified list in lieu of the record and/or the certified copy of the docket entries. (alew,) (Entered: 09/24/2021)

APPENDIX G

RESULT OF SEARCH FOR ALLWELL FROM ABSOLUTE TOTAL AS REGISTERED CORPORATION IN THE STATE OF SOUTH CAROLINA. THE RESULT SHOWS:

THIS NAME IS AVAILABLE

MEANING THAT ALLWELL FROM ABSOLUTE TOTAL IS NOT A CORPORATION REGISTERED IN SOUTH CAROLINA TO CONDUCT BUSINESS

THE RESULT ALSO SHOWS:

NO RESULTS

MEANING THAT ALLWELL FROM ABSOLUTE TOTAL CARE DOES NOT EXIST *PER SE* IN THE STATE OF SOUTH CAROLINA

Business Entities Online

File, Search, and Retrieve Documents Electronically

Business Name Search

To Search

Enter the business name of the company you wish to view and click "Search." Find the business in the results below and click to view the official business profile and relevant information.

To File for an Existing Business

Enter the business name of the company for which you wish to file documents and click search. Find the business in the results below and click to view the official business profile. From your business's profile click the "Add Filing" button.

Results displayed will show entities that contain your search criteria.

Search by Business Name

Begins With



ALLWELL from Absolute Total Care

This name is available

No Results