Appendix A:

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT. Dismissed petitioner's claim as failing to timely file objection., upon order, and instructions petitioner was given 3 days. This is due to US. postal mail Service. The court failed to address any issues raised by petitioner.

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-7247

DAMORIUS D. GAINES, a/k/a Damorius Dontavis Gaines, a/k/a Damorius Dontavious Gaines,

Plaintiff - Appellant,

v.

GEOFFREY BENEDICT EATON; CATHERINE T. HUEY; CORDELL J. MADDOX; ALAN MCCRORY WILSON; WILLIAM M. BLITCH, JR.; STAN OVERBY; CRAIG A. GARDNER; LILLIAN L. MEADOWS; LETITIA VERDIN; BEN APLIN; CHAD MCBRIDE,

Defendants - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Anderson. Henry M. Herlong, Jr., Senior District Judge. (8:22-cv-00416-HMH)

Submitted: February 21, 2023 Decided: February 24, 2023

Before NIEMEYER and DIAZ, Circuit Judges, and MOTZ, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Damorius D. Gaines, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

Appendix A.

PER CURIAM:

Damorius D. Gaines seeks to appeal the district court's order adopting the magistrate judge's report and recommendation to dismiss his 42 U.S.C. § 1983 complaint. We dismiss the appeal for lack of jurisdiction because the notice of appeal was not timely filed.

In civil cases, parties have 30 days after the entry of the district court's final judgment or order to note an appeal, Fed. R. App. P. 4(a)(1)(A), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(5) or reopens the appeal period under Fed. R. App. P. 4(a)(6). "[T]he timely filing of a notice of appeal in a civil case is a jurisdictional requirement." *Bowles v. Russell*, 551 U.S. 205, 214 (2007).

The district court entered its order on August 11, 2022. Gaines filed the notice of appeal on October 11, 2022.* Because Gaines failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we dismiss the appeal.

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.

DISMISSED

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* For purposes of this appeal, we assume that the date appearing in the notice of appeal is the earliest date Gaines could have delivered the notice to prison officials for mailing to the court. Fed. R. App. P. 4(c)(1); *Houston v. Lack*, 487 U.S. 266, 276 (1988).

FILED: February 24, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-7247
(8:22-cv-00416-HMH)

DAMORIUS D. GAINES, a/k/a Damorius Dontavis Gaines, a/k/a Damorius Dontavious Gaines

Plaintiff - Appellant

v.

GEOFFREY BENEDICT EATON; CATHERINE T. HUEY; CORDELL J. MADDOX; ALAN MCCRORY WILSON; WILLIAM M. BLITCH, JR.; STAN OVERBY; CRAIG A. GARDNER; LILLIAN L. MEADOWS; LETITIA VERDIN; BEN APLIN; CHAD MCBRIDE

Defendants - Appellees

J U D G M E N T

In accordance with the decision of this court, this appeal is dismissed.

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

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

Damorius D. Gaines, #346524, *a/k/a Damorius Dontavis Gaines*, *a/k/a Damorius Dontavious Gaines*, Plaintiff, vs. Geoffrey Benedict Eaton, Catherine T. Huey, Craig A. Gardner, Cordell J. Maddox, Stan Overby, Alan Wilson, William Blitch, Jr, Lillian L. Meadows, Letitia Verdin, Ben Aplin, Chad McBride, Defendants.	)	C.A. No. 8:22-416-HMH-TER **OPINION & ORDER**

This matter is before the court for review of the Report and Recommendation of United States Magistrate Judge Thomas E. Rogers, III made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina.[1] Plaintiff Damorius D. Gaines ("Gaines"), a state prisoner proceeding pro se, filed this action alleging violations of his constitutional rights pursuant to 42 U.S.C. § 1983. In his Report and Recommendation filed on March 28, 2022, Magistrate Judge Rogers recommends dismissing Plaintiff's malicious

[1] The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. See Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which 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 with instructions. 28 U.S.C. § 636(b)(1).

prosecution claim without prejudice[2] and all remaining claims with prejudice and without issuance and service of process. (R&R, generally, ECF No. 17.)

Gaines timely filed objections to the Report and Recommendation.[3] (Obj., generally, ECF No. 19.) Objections to the Report and Recommendation must be specific. Failure to file specific objections constitutes a waiver of a party's right to further judicial review, including appellate review, if the recommendation is accepted by the district judge. See United States v. Schronce, 727 F.2d 91, 94 & n.4 (4th Cir. 1984). In the absence of specific objections to the Report and Recommendation of the magistrate judge, this court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

Upon review, the court finds that Gaines's objections are non-specific, unrelated to the dispositive portions of the magistrate judge's Report and Recommendation, or merely restate his claims.[4] Plaintiff's objections are therefore without merit. Accordingly, after a thorough review of the magistrate judge's Report and the record in this case, the court adopts Magistrate Judge Rogers' Report and Recommendation and incorporates it herein.

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[2] Magistrate Judge Rogers noted that Gaines may bring a section 1983 action based on malicious prosecution in the future if the charges connected to his allegations are terminated in his favor.

[3] See Houston v. Lack, 487 U.S. 266 (1988).

[4] The court acknowledges that Gaines attached a section 2254 petition to his objections. To the extent Gaines is challenging the validity of his imprisonment, he must file a separate petition pursuant to 28 U.S.C. § 2254 after exhausting his post-conviction remedies in state court. See Heck v. Humphrey, 512 U.S. 477, 481 (1994) ("[H]abeas corpus is the exclusive remedy for a state prisoner who challenges the fact or duration of his confinement and seeks immediate or speedier release, even though such a claim may come within the literal terms of § 1983.").

It is therefore

ORDERED that Plaintiff's malicious prosecution claim is dismissed without prejudice. It is further

ORDERED that Plaintiff's remaining claims are dismissed with prejudice and without issuance and service of process.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
August 11, 2022

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified that he has the right to appeal this order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Damorius D. Gaines, #346524, *a/k/a Damorius Dontavis Gaines*, a/k/a *Damorius Dontavious Gaines,* Plaintiff, vs. Geoffrey Benedict Eaton, Catherine T. Huey, Craig A. Gardner, Cordell J. Maddox, Stan Overby, Alan Wilson, William Blitch, Jr, Lillian L. Meadows, Letitia Verdin, Ben Aplin,. Chad McBride, Defendants.	)	C/A: 8:22-416-MBS-TER Report and Recommendation

This is a civil action filed by a state prisoner, proceeding *pro se* and *in forma pauperis*. Pursuant to 28 U.S.C. 636(b)(1) and District of South Carolina Local Civil Rule 73.02(B)(2)(e), the undersigned is authorized to review all pretrial matters in such *pro se* cases and to submit findings and recommendations to the District Court. *See* 28 U.S.C. §§ 1915(e); 1915A (as soon as possible after docketing, district courts should review prisoner cases to determine whether they are subject to summary dismissal).

STANDARD OF REVIEW

Under established local procedure in this judicial district, a careful review has been made of Plaintiff's *pro se* complaint filed in this case. This review has been conducted pursuant to the procedural provisions of 28 U.S.C. § 1915 and in light of the following precedents: *Denton v. Hernandez*, 504 U.S. 25 (1992); *Neitzke v. Williams*, 490 U.S. 319, 324-25 (1989); *Haines v. Kerner*, 404 U.S. 519 (1972); *Nasim v. Warden, Md. House of Corr.*, 64 F.3d 951 (4th Cir. 1995); *Gordon v. Leeke*, 574 F.2d 1147 (4th Cir. 1978).

Plaintiff's Complaint has been filed pursuant to 28 U.S.C. § 1915, which permits an indigent litigant to commence an action in federal court without prepaying the administrative costs of proceeding with the lawsuit. To protect against possible abuses of this privilege, the statute allows a district court to dismiss the case upon a finding 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). A finding of frivolity can be made where the complaint "lacks an arguable basis either in law or in fact." *Denton v. Hernandez*, 504 U.S. at 31. Under § 1915(e)(2)(B), a claim based on a meritless legal theory may be dismissed *sua sponte*. *Neitzke v. Williams*, 490 U.S. 319 (1989).

This court is required to liberally construe *pro se* complaints. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Such *pro se* complaints are held to a less stringent standard than those drafted by attorneys. *Id.* ; *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). Even under this less stringent standard, however, the *pro se* complaint may be subject to summary dismissal. The mandated liberal construction afforded to *pro se* pleadings means that if the court can reasonably read the pleadings to state a valid claim on which plaintiff could prevail, it should do so, but a district court may not rewrite a complaint to include claims that were never presented, construct the plaintiff's legal arguments for him, or conjure up questions never squarely presented to the court. *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985); *Small v. Endicott*, 998 F.2d 411 (7th Cir. 1993); *Barnett v. Hargett*, 174 F.3d 1128 (10th Cir. 1999). 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 currently cognizable in a federal district court. *Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 390-91 (4th Cir.1990) (The "special judicial solicitude" with which a [court] should view such pro se complaints does not transform the court into an advocate.).

DISCUSSION

On March 1, 2022, Plaintiff was informed via court order of deficiencies in his Complaint that would subject his Complaint to summary dismissal and was given an opportunity to file an Amended Complaint. (ECF No. 6). Plaintiff availed himself of the opportunity and filed an Amended Complaint (ECF No. 10)[1]; however, deficiencies remain, and the action is subject to summary dismissal.

Plaintiff brings this action pursuant to 42 U.S.C. § 1983. Section 1983 "is not itself a source of substantive rights, but merely provides a method for vindicating federal rights elsewhere conferred." *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (internal quotation and citation omitted). A legal action under § 1983 allows "a party who has been deprived of a federal right under the color of state law to seek relief." *City of Monterey v. Del Monte Dunes at Monterey*, Ltd., 526 U.S. 687, 707 (1999). Under § 1983, a plaintiff must establish two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation "was committed by a person acting under color of state law." *West v. Atkins*, 487 U.S. 42, 48 (1988).

Plaintiff does not allege what federal law or constitutional rights specifically were violated, except to state "constitutional right, economic right, fundamental right, civil right [and] privileges and immunity clause." (ECF No. 10 at 8).[2] Plaintiff sues those involved in his prosecution. Plaintiff lists dates of events: two events in 2017 and three in 2018(September), and one in both

[1] Later on March 24, 2022, Plaintiff filed what is labeled to be another Amended Complaint; it is similar to the Amended Complaint discussed below, and is attached to ECF No. 10 and the action as a whole is subject to summary dismissal for the reasons discussed.

[2] Plaintiff has been warned several times that his nonsensical phrasing lists borders on the frivolous and he is to clearly state who did what to him and what he wants the court to do.

2017 and 2018.[3] The remainder occurred in 2020 and 2021. As injuries, Plaintiff alleges: "civil injury, continual injury, continuing injury, direct injury, legal injury, [and] malicious injury." (ECF No. 10 at 16). As relief, Plaintiff requests "extraordinary relief."[4]

Plaintiff's allegations involve judges, solicitors, detectives, and others related to Plaintiff's prosecution and appeals. (ECF No. 10). The instant allegations as to liberally construed claims of malicious prosecution and false arrest are familiar to the court as they are the same allegations contained in No. 8:22-238-MBS-TER, which was previously recommended to be dismissed for failure to state a claim upon which relief can be granted. "[R]epetitious litigation of virtually identical causes of action may be dismissed under 28 U.S.C. § 1915 as frivolous." *Paul v. de Holczer*, Case No. 3:15–2178–CMC–PJG, 2015 WL 4545974 (D.S.C. July 28, 2015) (holding that "the instant Complaint should be summarily dismissed as a frivolous duplicate filing in the interest of judicial economy and efficiency"), *affirmed by* 631 Fed. Appx. 197 (4th Cir. February 4, 2016); *Cox v. Cartledge*, No. 3:13–481–TMC, 2013 WL 1401684 (D.S.C. March 13, 2013), *adopted by* 2013 WL 1401674 (D.S.C. April 8, 2013) (same). The duplicative and redundant nature of this suit subjects this action to summary dismissal due to frivolity. *See Cottle v. Bell*, 229 F.3d 1142, (4th Cir. 2000)(holding "district courts are not required to entertain duplicative or redundant lawsuits" and "may dismiss such suits as frivolous pursuant to § 1915(c).").

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[3] Plaintiff's claims for events in 2017 and 2018 are barred by the statute of limitations. "A federal court may *sua sponte* dismiss a complaint as barred by the statute of limitations on initial review pursuant to 28 U.S.C. § 1915 (2018)." *Harriot v. United States*, 795 Fed. Appx. 215, 216 (4th Cir. 2020), *cert. denied*, No. 20-5251, 2020 WL 5883643 (U.S. Oct. 5, 2020). State law provides the statute of limitations for § 1983 claims. In South Carolina, the applicable statute of limitations is generally three years. *See* S.C. Code Ann. § 15-3-530. Plaintiff filed this action on February 10, 2022. The statute of limitations for false arrest claims is not tolled during the pendency of the criminal proceedings. *Wallace v. Kato*, 549 U.S. 384, 397 (2007).

[4] To the extent Plaintiff is attempting to obtain his "freedom" or release from prison in this civil rights action, he cannot. *See Heck v. Humphrey*, 512 U.S. at 481 (stating that "habeas corpus is the exclusive remedy for a state prisoner who challenges the fact or duration of his confinement and seeks immediate or speedier release, even though such a claim may come within the literal terms of § 1983"); and *Johnson v. Ozmint*, 567 F. Supp. 2d 806, 823 (D.S.C. 2008) (release from prison is not a remedy available under 42 U.S.C. § 1983).

As a matter of thoroughness, the individual claims and defendants are also subject to summary dismissal for failure to state a claim upon which relief can be granted.

As background, public records and Plaintiff's filed attachments show that Plaintiff, after warrants and indictments were issued, was convicted by a jury for kidnapping, attempted armed robbery, armed robbery, and a weapons offense in September 2018 out of Anderson County for crimes occurring in early 2017.

Plaintiff sues judges, Defendants Maddox, Eaton, and Verdin, who are subject to summary dismissal as claims against them are barred by the doctrine of absolute judicial immunity. Judicial immunity is a threshold question which requires summary dismissal. *Siegert v. Gilley*, 500 U.S. 226, 232 (1991); *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985). The doctrine of absolute immunity for acts taken by a judge in connection with his or her judicial authority and responsibility is well established and widely recognized. *See Mireles v. Waco*, 502 U.S. 9, 11–12 (1991) (judges are immune from civil suit for actions taken in their judicial capacity, unless "taken in the complete absence of all jurisdiction"); *Stump v. Sparkman*, 435 U.S. 349, 359 (1978) ("A judge is absolutely immune from liability for his judicial acts even if his exercise of authority is flawed by the commission of grave procedural errors."); *Pressly v. Gregory*, 831 F.2d 514, 517 (4th Cir.1987) (a suit by South Carolina inmate against two Virginia magistrates); *Chu v. Griffith*, 771 F.2d 79, 81 (4th Cir.1985) ("It has long been settled that a judge is absolutely immune from a claim for damages arising out of his judicial actions.").

Plaintiff sues solicitors and attorneys involved in the prosecution of Plaintiff and his resulting appeals. Defendants Wilson(Attorney General), Blitch (Assistant Attorney General), Meadows(Assistant Attorney General), Aplin(Assistant Attorney General), Overby(deputy solicitor), and Huey(deputy solicitor) are subject to summary dismissal. Prosecutors are protected

by immunity for activities in or connected with judicial proceedings. *Van de Kamp v. Goldstein*, 555 U.S. 335, 338-44 (2009); *Dababnah v. Keller–Burnside*, 208 F.3d 467, 470 (4th Cir.2000). Prosecutors, when acting within the scope of their duties, have absolute immunity from damages liability under § 1983 for alleged civil rights violations committed in the course of proceedings that are "intimately associated with the judicial phase of the criminal process." *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976).

As to the remaining defendants, Defendants Gardner(detective) and McBride(sheriff) and remaining claims, liberally construed Plaintiff appears to be attempting to allege claims of malicious prosecution and false arrest.

To the extent under a liberal construction Plaintiff attempts to allege a malicious prosecution claim, a claim that one is wrongfully detained because his arrest was made pursuant to a warrant that was not supported by probable cause, is a claim for malicious prosecution. *See Porter field*, 156 F.3d at 568; *see also Wallace v. Kato*, 549 U.S. 384, 389-90 (2007). To state a malicious prosecution claim, Plaintiff must show at least, that "defendant[s] have seized [plaintiff] pursuant to legal process that was not supported by probable cause and that the criminal proceedings [have] terminated in [plaintiff's] favor." *Burrell v. Virginia*, 395 F.3d 508, 514 (4th Cir. 2005)(internal citations and quotations omitted). The U.S. Supreme Court provided in *Heck v. Humphrey*, 512 U.S. 477 (1994) that until a conviction was set aside or charges finally dismissed without the possibility of revival, a § 1983 claim could not be pursued based on allegations of unlawful circumstances surrounding the criminal prosecution. *See also Brooks v. City of Winston-Salem, N.C.*, 85 F.3d 178 (4th Cir. 1996). Under the favorable termination rule, the charges must be terminated "for reasons indicative of the innocence;" courts have held that an unexplained *nolle prosequi* or disposal of charges for reasons other than innocence do not satisfy the *Heck* "favorable

termination" requirement. Restatement(Second) of Torts § 660 (1977); *see also Tucker v. Duncan*, 499 F.2d 963, 965 (4th Cir. 1974); *Wilkins v. DeReyes*, 528 F.3d 790, 802-03 (10th Cir. 2008); *Washington v. Summerville*, 127 F.3d 552, 558-59 (7th Cir. 1997); *Posr v. Court Officer Shield # 207*, 180 F.3d 409, 418 (2nd Cir. 1999); *Jackson v. Gable*, 2006 WL 1487047, at *6 (D.S.C. May 25, 2006); *Nicholas v. Wal–Mart Stores, Inc.*, 33 Fed. Appx. 61, 64–65 (D.S.C. 2002). While *Wallace* held that *Heck* no longer bars claims of false arrest by pretrial detainees, *Heck* is still applicable to claims of malicious prosecution. *Wallace*, 549 U.S. at 387 n.1, 390 n.2. Plaintiff has not shown that the charges connected to his allegations has been favorably terminated in accordance with the above law. As such, his claims for malicious prosecution are subject to summary dismissal.

To the extent under a liberal construction Plaintiff attempts to allege a false arrest claim, under § 1983, "a public official cannot be charged with false arrest when he arrests a defendant pursuant to a facially valid warrant." *Porterfield v. Lott*, 156 F.3d 563, 568 (4th Cir. 1998)(internal citations omitted). The Fourth Circuit reiterated that "a false arrest claim must fail where it is made pursuant to a facially valid warrant." *Dorn v. Town of Prosperity*, 375 Fed. Appx. 284, 286 (4th Cir. 2010) (internal quotations and citations omitted). Based on Plaintiff's filings, he was arrested pursuant to a facially valid warrant, and any false arrest claims are subject to summary dismissal. As a matter of public record and filings with this court from Plaintiff, Plaintiff was indicted.[5]

[5] "[A]an indictment, fair upon its face, returned by a properly constituted grand jury, conclusively determines the existence of probable cause." *Durham v. Horner*, 690 F.3d 183, 189 (4th Cir. 2012) (*quoting Gerstein v. Pugh*, 420 U.S. 103, 117 n.19 (1975)); *see also Provet*, 2007 WL 1847849, at *5 (section 1983 claims of false arrest and malicious prosecution were precluded because of indictment).

Based on the allegations presented by Plaintiff, Plaintiff has failed to state a claim upon which relief could be granted. Plaintiff failed to cure the deficiencies in the Complaint and was already given notice and opportunity to file an Amended Complaint and availed himself of the opportunity. Thus, Plaintiff's action is subject to summary dismissal.

This is the third recommendation as to Plaintiff this year for summary dismissal for failure to state a claim upon which relief could be granted. Plaintiff is proceeding *in forma pauperis* in these three actions. For each action dismissed for failure to state a claim upon which relief can be granted, Plaintiff is accumulating a strike under the PLRA. *See Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721 (2020); 28 U.S.C. § 1915(g). Plaintiff's cause No. 8:22-238-MBS-TER and No. 4:22-cv-298-MBS-TER have been previously recommended to be dismissed for failure to state a claim upon which relief can be granted. Upon the adoption of all three recommendations, Plaintiff will have accumulated three strikes under the PLRA and will not be allowed to proceed *in forma pauperis* in future actions unless he can demonstrate imminent danger of serious physical injury. *Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721 (2020); 28 U.S.C. § 1915(g).

RECOMMENDATION

It is recommended that the District Court dismiss Plaintiff's claims as to malicious prosecution without prejudice[6] and dismiss any remaining claims, including false arrest, with

[6] The dismissal as to the malicious prosecution claim here is without prejudice because in the event Plaintiff's charge is favorably terminated for reasons indicative of innocence as discussed above, in the future, he may again attempt to pursue a § 1983 action.

prejudice *and without issuance and service of process.*[7]

s/Thomas E. Rogers, III
Thomas E. Rogers, III
United States Magistrate Judge

March 28, 2022
Florence, South Carolina

Plaintiff's attention is directed to the important notice on the next page.

[7] *Heck* does not apply to claims of false arrest in the pre-conviction context. *See Simmons v. Beam*, No. 4:15-CV-03401-RBH, 2016 WL 4035457, at *3 (D.S.C. July 28, 2016), aff'd, 685 Fed. Appx. 220 (4th Cir. 2017); *see Wallace v. Kato*, 549 U.S. 384 (2007). The Fourth Circuit Court of Appeals has found where the district court already afforded an opportunity to amend, the district court has the discretion to afford another opportunity to amend or can "dismiss the complaint with prejudice, thereby rendering the dismissal order a final, appealable order." *Workman v. Morrison Healthcare*, 724 Fed. Appx. 280 (4th Cir. June 4, 2018)(Table); *Knox v. Plowden*, 724 Fed. Appx. 263 (4th Cir. May 31, 2018)(Table)(on remand, district judge dismissed the action with prejudice); *Mitchell v. Unknown*, 2018 WL 3387457 (4th Cir. July 11, 2018)(unpublished). Thus, in line with Fourth Circuit cases, the undersigned recommends the dismissal in this case as to these claims be with prejudice, as Plaintiff has had an opportunity to amend, filed an Amended Complaint, and has failed to cure deficiencies.

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 committee's 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
Post Office Box 2317
Florence, South Carolina 29503

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).

Additional material from this filing is available in the Clerk's Office.