

**UNPUBLISHED**

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

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**No. 24-1072**

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OTIS BRANDON,

Plaintiff - Appellant,

v.

JANSSEN PHARMACEUTICALS; JOHNSON AND JOHNSON, INC.,

Defendants - Appellees.

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Appeal from the United States District Court for the District of South Carolina, at  
Columbia. Richard Mark Gergel, District Judge. (3:23-cv-04197-RMG)

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Submitted: May 21, 2024

Decided: ~~May 24, 2024~~

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Before WYNN and BENJAMIN, Circuit Judges, and KEENAN, Senior Circuit Judge.

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Affirmed by unpublished per curiam opinion.

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Otis Brandon, Appellant Pro Se. Michael Kramer Halper, Rachel B. Sherman,  
PATTERSON, BELKNAP, WEBB & TYLER, New York, New York; Amanda Sally  
Kitts, NELSON MULLINS RILEY & SCARBOROUGH, LLP, Columbia, South  
Carolina, for Appellees.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Otis Brandon appeals the district court's order denying relief on his civil complaint. The district court referred this case to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B). The magistrate judge recommended that relief be denied and advised Brandon that failure to file timely, specific objections to this recommendation could waive appellate review of a district court order based upon the recommendation.

The timely filing of specific objections to a magistrate judge's recommendation is necessary to preserve appellate review of the substance of that recommendation when the parties have been warned of the consequences of noncompliance. *Martin v. Duffy*, 858 F.3d 239, 245 (4th Cir. 2017); *Wright v. Collins*, 766 F.2d 841, 846-47 (4th Cir. 1985); *see also Thomas v. Arn*, 474 U.S. 140, 154-55 (1985). Brandon has forfeited appellate review by failing to file objections to the magistrate judge's recommendation after receiving proper notice. Accordingly, we grant Brandon's motion for an extension of time to file his informal reply brief and affirm the judgment of the district court.

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*

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION**

Otis Brandon,

Plaintiff,

v.

Janssen Pharmaceuticals; Johnson and  
Johnson, Inc.,

Defendants.

Case No. 3:23-cv-04197-RMG

**ORDER AND OPINION**

This matter is before the Court on the Report and Recommendation (“R & R”) of the Magistrate Judge, recommending that the Court grant Defendants’ motion to dismiss. (Dkt. No. 31). Plaintiff did not object to the R & R. For the reasons set forth below, the Court adopts the R & R as the Order of the Court.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the Court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (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. Additionally, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where the plaintiff fails to file any specific objections, “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.” *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (internal quotation omitted).

Plaintiff, a self-represented state inmate, filed this action alleging that Defendants deprived him of his constitutional rights when Defendants knew that Risperdal—an antipsychotic

medication manufactured and distributed by Defendant Janssen Pharmaceuticals—created a substantial risk of harm to Plaintiff and disregarded that risk by continuing to manufacture and distribute the drug. (Dkt. No. 1-1 at 5).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege: (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 the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988). The Magistrate Judge recommends granting Defendants’ motion to dismiss because Plaintiff fails to plausibly allege that Defendants acted under color of state law. (Dkt. No. 31 at 3–4). Since Plaintiff only alleged that Defendants manufactured and distributed the drug, the Magistrate Judge found that the allegations do not bring their conduct within the class of persons who can be sued as state actors under § 1983. (*Id.* at 5).

After a careful review of the record in this matter and the R & R, the Court finds that the R & R ably summarizes the legal and factual issues in this matter and correctly concludes that Defendants’ motion to dismiss should be granted. Accordingly, the Court adopts the R & R (Dkt. No. 31) as the order of the Court.

**AND IT IS SO ORDERED.**

s/ Richard Mark Gergel  
Richard Mark Gergel  
United States District Judge

January 3, 2024  
Charleston, South Carolina

# UNITED STATES DISTRICT COURT

for the  
District of South Carolina

\_\_\_\_\_  
Otis Brandon,

\_\_\_\_\_  
*Plaintiff*

v.

\_\_\_\_\_  
Janssen Pharmaceuticals et al ,

\_\_\_\_\_  
*Defendants*

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Civil Action No. 3:23-cv-04197-RMG

## JUDGMENT IN A CIVIL ACTION

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

☐ the plaintiff *(name)* \_\_\_\_\_ recover from the defendant *(name)* \_\_\_\_\_ the amount of \_\_\_\_\_ dollars (\$), which includes prejudgment interest at the rate of \_\_\_\_\_%, plus postjudgment interest at the rate of \_\_\_\_\_%, along with costs.

☐ the plaintiff recover nothing, the action be dismissed on the merits, and the defendant *(name)* \_\_\_\_\_ recover costs from the plaintiff *(name)* \_\_\_\_\_.

☒ other: The Court adopts the R & R (Dkt. No. 31) as the order of the Court. AND IT IS SO ORDERED.

This action was *(check one)*:

☐ tried by a jury, the Honorable \_\_\_\_\_ presiding, and the jury has rendered a verdict.

☐ tried by the Honorable \_\_\_\_\_ presiding, without a jury and the above decision was reached.

☒ Decided by the Honorable Richard Mark Gergel, United States District Judge, presiding.

Date: January 3, 2024  
Charleston, South Carolina

ROBIN L. BLUME, CLERK OF COURT

s/D. Gray

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

FILED: June 17, 2024

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 24-1072  
(3:23-cv-04197-RMG)

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OTIS BRANDON

Plaintiff - Appellant

v.

JANSSEN PHARMACEUTICALS; JOHNSON AND JOHNSON, INC.

Defendants - Appellees

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M A N D A T E

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The judgment of this court, entered May 24, 2024, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule  
41(a) of the Federal Rules of Appellate Procedure.

/s/Nwamaka Anowi, Clerk