

UNPUBLISHED

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

No. 24-1192

CHRISTINA ALEXANDRIA TAYLOR-LOPER,

Plaintiff - Appellant,

v.

SAM'S CLUB/WALMART ASSOCIATES, INC.,

Defendant - Appellee.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Richard E. Myers, II, Chief District Judge. (5:22-cv-00361-M-RJ)

Submitted: September 26, 2024

Decided: October 3, 2024

Before WILKINSON, AGEE, and BERNER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Christina Alexandria Taylor-Loper, Appellant Pro Se. Jose Rodrigo Pocasangre, Winston-Salem, North Carolina, Shannon Sumerell Spainhour, CONSTANGY, BROOKS, SMITH & PROPHETE, LLP, Asheville, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Christina Alexandria Taylor-Loper appeals the district court's order dismissing her complaint brought pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e to 2000e-17. The district court referred this case to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1). The magistrate judge recommended that the case be dismissed and advised Taylor-Loper 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). Taylor-Loper has forfeited appellate review by failing to file objections to the magistrate judge's recommendation after receiving proper notice. Accordingly, we 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
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:22-CV-361-M

CHRISTINA ALEXANDRIA
TAYLOR-LOPER,

Plaintiff,

v.

SAM'S CLUB/WALMART ASSOCIATES,
INC.,

Defendant.

**MEMORANDUM AND
RECOMMENDATION**

This matter is before the court on Defendant's motion to compel, [DE-31], and motion for sanctions, including dismissal for failure to prosecute, pursuant to Fed. R. Civ. P. 41(b) and Local Civ. R. 7.1, E.D.N.C., [DE-33]. Plaintiff did not respond to either motion. On December 20, 2023, the court ordered Plaintiff to show cause in writing by no later than January 3, 2024, why the court should not dismiss this case for failure to participate in discovery and failure to prosecute. [DE-38]. Plaintiff did not respond to the show cause order.

Defendant asserts Plaintiff has failed to comply with her discovery obligations, including failing to attend her properly noticed deposition. [DE-33] at 6–7. The court may sanction a party who fails to appear for a deposition after being served with proper notice. Fed. R. Civ. P. 37(d)(1)(A)(i). Among the available sanctions is dismissal with prejudice. Fed. R. Civ. P. 37(b)(2)(A)(v). The court may also dismiss an action on a defendant's motion "[i]f the plaintiff fails to prosecute or to comply with these rules or a court order[.]" Fed. R. Civ. P. 41(b). "The legal standard for dismissals under Rule 37 is virtually the same as that for dismissals for failure to prosecute under Rule 41." *Carter v. Univ. of W. Va. Sys., Bd. of Trustees*, 23 F.3d 400 (4th Cir.

1994). The court must consider the following four factors before imposing the ultimate sanction of dismissal: “(1) the plaintiff’s degree of personal responsibility; (2) the amount of prejudice caused the defendant; (3) the presence of a drawn out history of deliberately proceeding in a dilatory fashion; and (4) the effectiveness of sanctions less drastic than dismissal.” *Id.* “While the district court clearly has the authority to dismiss complaints, . . . this authority should be exercised with restraint and ‘[a]gainst the power to prevent delays must be weighed the sound public policy of deciding cases on their merits.’” *Id.* (citations omitted).

Plaintiff’s failure to participate in discovery, including the failure to appear at her deposition, is grounds for dismissal under both Rule 37(d) and Rule 41(b). Plaintiff failed to attend her properly noticed deposition. *See* Dep. Notice [DE-33-1]; Spainhour Decl. [DE-33-2]. Plaintiff also failed to respond to Defendant’s written discovery and motion to compel. Def.’s Mem. [DE-34] at 3; *see also* Mot. to Compel [DE-31]. Despite being given opportunities to do so, Plaintiff has provided no reason for failing to attend her deposition. Thus, Plaintiff bears full responsibility for her failure to appear. Plaintiff’s refusal to participate in discovery has prejudiced Defendant by prolonging the resolution of this matter, depriving Defendant of information needed to defend against Plaintiff’s claims, and causing Defendant to incur substantial costs of filing motions seeking Plaintiff’s compliance and expending resources for a deposition that did not occur. *See Newman v. Durham Hous. Auth.*, No. 1:22-CV-242, 2023 WL 2477514, at *2 (M.D.N.C. Mar. 13, 2023) (plaintiff’s failure to participate in discovery prejudiced defendant where defendant bore the expenses associated with a worthless deposition and filing a motion and was deprived of discovery needed to defend the case); *Bland v. Booth*, No. 7:19-CV-63-BO, 2020 WL 2575556, at *2 (E.D.N.C. May 21, 2020) (finding plaintiff’s non-compliance, including failing to attend a deposition, prejudiced defendants where the defendants’ lawyers spent a year attempting to

conduct discovery with an opposing party who showed little interest in seriously participating in his own case). Plaintiff appears to have no means to pay a monetary penalty given that she is proceeding *in forma pauperis*,¹ and the court finds that no less drastic sanction would be effective given Plaintiff's apparent abandonment of her case. See *Jones v. Campbell Univ.*, No. 21-1921, 2023 WL 34172, at *1 (4th Cir. Jan. 4, 2023) ("There is a significant need to deter parties from unilaterally deciding not to attend a properly scheduled deposition."), *cert. denied*, No. 22-1128, 2023 WL 6377878 (U.S. Oct. 2, 2023). Finally, Plaintiff was cautioned that a failure to respond to the show cause order would result in a recommendation that this case be dismissed. Accordingly, it is recommended that Plaintiff's case be dismissed with prejudice and the motion to compel be denied as moot.

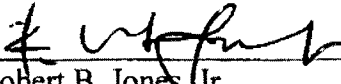
IT IS DIRECTED that a copy of this Memorandum and Recommendation be served on each of the parties or, if represented, their counsel. Each party shall have until **January 24, 2024** to file written objections to the Memorandum and Recommendation. The presiding district judge must conduct his or her own review (that is, make a *de novo* determination) of those portions of the Memorandum and Recommendation to which objection is properly made and may accept, reject, or modify the determinations in the Memorandum and Recommendation; receive further evidence; or return the matter to the magistrate judge with instructions. See, e.g., 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3); Local Civ. R. 1.1 (permitting modification of deadlines specified in local rules), 72.4(b). Any response to objections shall be filed by within **14 days** after service of the objections on the responding party.

If a party does not file written objections to the Memorandum and Recommendation by the

¹ Defendant also seeks its attorney's fees and expenses in bringing the motion for sanctions, but given Plaintiff's *in forma pauperis* status, it is recommended that the court deny that relief.

foregoing deadline, the party will be giving up the right to review of the Memorandum and Recommendation by the presiding district judge as described above, and the presiding district judge may enter an order or judgment based on the Memorandum and Recommendation without such review. In addition, the party's failure to file written objections by the foregoing deadline will bar the party from appealing to the Court of Appeals from an order or judgment of the presiding district judge based on the Memorandum and Recommendation. *See Wright v. Collins*, 766 F.2d 841, 846-47 (4th Cir. 1985).

Submitted, this the 10th day of January 2024.


Robert B. Jones, Jr.
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

Case No. 5:22-cv-00361-M-RJ

CHRISTINA ALEXANDRIA TAYLOR-
LOPER,

Plaintiff,

v.

SAM'S CLUB/WALMART ASSOC. INC.,

Defendant.

ORDER


This matter comes before the court on the Memorandum and Recommendation ("M&R") of Magistrate Judge Robert B. Jones, Jr. [DE 39]. Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b), Judge Jones recommends that this court grant Defendant's motion for sanctions [DE 33]; dismiss Plaintiff's complaint with prejudice; and deny as moot Defendant's motion to compel [DE 31]. Plaintiff has not objected to the recommendation.

A magistrate judge's recommendation carries no presumptive weight. The court "may accept, reject, or modify, in whole or in part, the . . . recommendation[] . . . receive further evidence or recommit the matter to the magistrate judge with instructions." 28 U.S.C. § 636(b)(1); *accord Mathews v. Weber*, 423 U.S. 261, 271 (1976). The court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.* § 636(b)(1). Absent a specific and timely objection, as here, the court reviews only for "clear error" and need not give any explanation for adopting the recommendation. *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

Upon careful review of the M&R and the record presented, and finding no clear error, the court ADOPTS the recommendation of the magistrate judge as its own. For the reasons stated

therein, the court GRANTS the motion for sanctions [DE 33] and DISMISSES Plaintiff's complaint with prejudice based on her failure to comply with her discovery obligations. The Court DENIES AS MOOT Defendant's motion to compel [DE 31].

SO ORDERED this 2^d day of February, 2024.



RICHARD E. MYERS II
CHIEF UNITED STATES DISTRICT JUDGE

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

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