FILED: May 28, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-1026
(3:24-cv-00068-MGL)

THURMOND R. GUESS, SR.

Plaintiff - Appellant

v.

DANIEL COBLE, as Richland County Circuit Court; MORGAN STUART STOUT; TRAVELERS, Insurance Company Property, Casualty insurance company; BRETT BAYNE

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/ NWAMAKA ANOWI, CLERK

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-1026

THURMOND R. GUESS, SR.,

Plaintiff - Appellant,

v.

DANIEL COBLE, as Richland County Circuit Court; MORGAN STUART STOUT; TRAVELERS, Insurance Company Property, Casualty insurance company; BRETT BAYNE,

Defendants - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Columbia. Mary G. Lewis, District Judge. (3:24-cv-00068-MGL)

Submitted: May 22, 2025 Decided: May 28, 2025

Before KING, AGEE, and WYNN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Thurmond R. Guess, Sr., Appellant Pro Se. Nathaniel Edwin Akers, HOWELL, GIBSON & HUGHES, PA, Beaufort, South Carolina; Margaret Urbanic, CLAWSON & STAUBES, LLC, Charleston, South Carolina, for Appellees.

PER CURIAM:

Thurmond R. Guess, Sr., appeals the district court's order accepting in part the recommendation of the magistrate judge and dismissing without prejudice Guess's 42 U.S.C. § 1983 complaint, and a subsequent order denying Guess's Fed. R. Civ. P. 59(e) motion for reconsideration.* We have reviewed the record and find no reversible error. Accordingly, we affirm the district court's orders. *Guess v. Coble*, No. 3:24-cv-00068-MGL (D.S.C. Aug. 22, 2024; Dec. 12, 2024). 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

* The district court's dismissal without prejudice is a final order because the court dismissed the complaint "without granting leave to amend." *Britt v. DeJoy*, 45 F.4th 790, 791 (4th Cir. 2022) (en banc) (order).

FILED: June 9, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-1026
(3:24-cv-00068-MGL)

THURMOND R. GUESS, SR.

Plaintiff - Appellant

v.

DANIEL COBLE, as Richland County Circuit Court; MORGAN STUART STOUT; TRAVELERS, Insurance Company Property, Casualty insurance company; BRETT BAYNE

Defendants - Appellees

TEMPORARY STAY OF MANDATE

Under Fed. R. App. P. 41(b), the filing of a timely petition for rehearing or rehearing en banc stays the mandate until the court has ruled on the petition. In accordance with Rule 41(b), the mandate is stayed pending further order of this court.

/s/Nwamaka Anowi, Clerk

FILED: June 27, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-1026
(3:24-cv-00068-MGL)

THURMOND R. GUESS, SR.

Plaintiff - Appellant

v.

DANIEL COBLE, as Richland County Circuit Court; MORGAN STUART STOUT; TRAVELERS, Insurance Company Property, Casualty insurance company; BRETT BAYNE

Defendants - Appellees

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 40 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge King, Judge Agee, and Judge Wynn.

For the Court

/s/ Nwamaka Anowi, Clerk

FILED: July 7, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-1026
(3:24-cv-00068-MGL)

THURMOND R. GUESS, SR.

Plaintiff - Appellant

v.

DANIEL COBLE, as Richland County Circuit Court; MORGAN STUART STOUT; TRAVELERS, Insurance Company Property, Casualty insurance company; BRETT BAYNE

Defendants - Appellees

MANDATE

The judgment of this court, entered May 28, 2025, 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

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

THURMOND GUESS, SR., Plaintiff,	§	
vs.	§	Civil Action No. 3:24-cv-68-MGL
DANIEL COBLE AS RICHLAND COUNTY CIRCUIT COURT; MORGAN STUART STOUT; TRAVELERS, INSURANCE COMPANY PROPERTY, CASUALTY INSURANCE COMPANY; and BRETT BAYNE, Defendants.	§	

ORDER DENYING PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT

Pending before the Court is Plaintiff Thurmond Guess, Sr.'s (Guess) motion to alter or amend the judgment in this case under Federal Rule of Civil Procedure 59(e). Defendants Daniel Coble, Richland County Circuit Court Judge (Judge Coble); Morgan Stuart Stout (Stout); and Travelers Property Casualty Insurance Company (Travelers) oppose the motion. Having carefully considered the motion, the responses, the reply, the record, and the applicable law, it is the judgment of the Court Guess's motion will be denied.

Under Rule 59(e), a Court may alter or amend a judgment "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." *Hutchinson v. Staton*, 994 F.2d 1076, 1081 (4th Cir. 1993).

A Rule 59(e) motion "may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment." *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n.5 (2008). Further, "mere disagreement [with a district court's ruling] does not support a Rule 59(e) motion." *Hutchinson*, 994 F.2d at 1082. Generally, "reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly." *Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998).

Here, Guess's motion to alter or amend merely regurgitates and rehashes the arguments already rejected by the Court in its order granting the motions to dismiss filed by Judge Coble, Stout, and Travelers. Guess has failed to present any change in the law, any newly discovered evidence, or any clear error. Thus, his motion fails.

Therefore, it is the judgment of the Court Guess's motion to alter or amend is **DENIED**.

IT IS SO ORDERED.

Signed this 12th day of December 2024, in Columbia, South Carolina.

s/ Mary Geiger Lewis
MARY GEIGER LEWIS
UNITED STATES DISTRICT JUDGE

*****

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of their right to appeal this Order within thirty days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

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

Thurmond Guess, Sr., Plaintiff,	§	
vs.	§	Civil Action No. 3:24-cv-68-MGL
Daniel Coble as Richland County Circuit Court; Morgan Stuart Stout; Travelers, Insurance Company Property, Casualty Insurance Company; and Brett Bayne, Defendants.	§	

ORDER ADOPTING THE REPORT AND RECOMMENDATION IN PART, AFFIRMING THE MAGISTRATE JUDGE'S DECISION TO DENY PLAINTIFF'S SECOND MOTION TO RECUSE, GRANTING DEFENDANTS' MOTIONS TO DISMISS, DISMISSING THIS MATTER WITHOUT PREJUDICE, AND DEEMING AS MOOT ALL REMAINING MOTIONS

I. INTRODUCTION

Plaintiff Thurmond Guess, Sr. (Guess), who is representing himself, brought this action against Defendants Honorable Daniel Coble, Richland County Circuit Court Judge (Judge Coble); Morgan Stuart Stout (Stout); Travelers Property Casualty Insurance Company (Travelers); and Brett Bayne (Bayne), alleging defamation under state law and violations of his due process rights under 42 U.S.C. § 1983.

This matter is before the Court for review of the Report and Recommendation (Report) of the Magistrate Judge recommending the Court grant the motions to dismiss filed by Judge Coble, Stout, and Travelers and dismiss this case without prejudice for insufficient service of process.

Also before the Court is Guess's appeal of the Magistrate Judge's ruling denying his second motion for recusal. The Report and ruling were made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

II. FACTUAL AND PROCEDURAL BACKGROUND

The Magistrate Judge filed the Report on July 11, 2024. Guess filed his objections on July 17, 2024; Judge Coble, Stout, and Travelers filed their replies on July 30, 2024; and Guess filed his sur-reply on August 5, 2024. Bayne has failed to appear in this action. The Court has reviewed Guess's objections but holds them to be without merit. It will therefore enter judgment accordingly.

As is relevant here, Guess filed this action on January 5, 2024. The Magistrate Judge issued an order authorizing service of process on January 19, 2024. The order advised Guess he was responsible for service of process under Federal Rule of Civil Procedure 4 and explained failure to serve each defendant within ninety days could result in the defendant's dismissal. On February 1, 2024, Guess filed an amended complaint.

When the Magistrate Judge issued her Report, "Guess ha[d] not provided any indication or proof that he ha[d] . . . serv[ed] the issued summons and a copy of the [amended complaint]" in accordance with Rule 4. Report at 3–4. Guess has since provided the Court undated emails from himself to Judge Coble and Bayne, appearing to contain the summons and amended complaint. Guess Reply at Exhibit A. Guess has failed to provide similar emails from himself to Stout and Travelers.

Judge Coble, Stout, and Travelers have filed motions to dismiss Guess's claims for lack of subject matter jurisdiction, lack of personal jurisdiction, insufficient process, and insufficient

service of process. Judge Coble and Stout have alternatively moved for the Court to dismiss the claims under Federal Rule of Procedure 12(b)(6) or enter judgment on the pleadings.

Guess has filed several motions, including two motions to recuse the Magistrate Judge.

In Guess's first motion to recuse, he argued the Magistrate Judge was biased against him, as she previously recommended his cases be dismissed. The Magistrate Judge denied the motion in a written order, ruling Guess pointed to no extrajudicial source of bias or prejudice, and his allegations were therefore insufficient to warrant recusal.

Four days after the Magistrate Judge issued her written order, Guess filed a second motion to recuse. The Magistrate Judge denied the second motion in a text order, relying on the reasons set forth in her written order. Guess subsequently appealed the Magistrate Judge's text order and requested this Court issue a written order.

III. MOTION TO RECUSE

Guess appears to argue the Court should refuse to consider the Report because the Magistrate Judge should have been, or should be, recused from this case.

A. Standard of Review

The standard for judicial recusal is set out at 28 U.S.C. § 455. Under that statute, a judge must disqualify herself in "any proceeding in which h[er] impartiality might reasonably be questioned[,]" including where she has a "personal bias or prejudice concerning a party[.]" *Id.* § 455(a) & (b)(1). Importantly, for any alleged bias or prejudice to be disqualifying, it "must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case." *Shaw v. Martin*, 733 F.2d 304, 308 (4th Cir. 1984) (citing *United States v. Grinnell Corp.*, 384 U.S. 563, 583 (1966)).

Guess's motion to recuse is a nondispositive motion. Therefore, the Court must affirm the Magistrate Judge's order on the motion unless it is "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a).

B. Discussion and Analysis

Guess insists recusal is proper because the Magistrate Judge has presided over many cases filed by him, he has requested her recusal before, and she has never been fair to him in this case. It is unclear exactly what sort of unfairness Guess alleges. He neglects to provide any argument or evidence to support these allegations. And, that the Magistrate Judge's rulings have disfavored him are insufficient to remove her from this case. *See Liteky v. United States*, 510 U.S. 540, 555 (1994) ("[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion.").

The Court is unable to say the Magistrate Judge's impartiality in this case can reasonably be questioned. Although Guess may wish his case was before a different Magistrate Judge or without Magistrate Judge involvement at all, he has failed to provide any good reason for this Court to remove her from the case. And, as evidenced by this order, any reports and recommendations and orders issued by the Magistrate Judge are subject to review by this Court. The Court will therefore affirm the Magistrate Judge's decision to deny Guess's second motion to recuse and turn to the merits of the Report.

IV. THE REPORT

A. Standard of Review

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 the

Court. *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 to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

This Court, however, need not conduct a de novo review of the record "when a party makes general and conclusory objections that do not direct the court to a specific error in the [Magistrate Judge's] proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). The Court reviews the Report only for clear error in the absence of specific objections. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating "in 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 to accept the recommendation'").

B. Discussion and Analysis

Except for Guess's recusal argument, which was addressed above, he has failed to present any specific objections to the Report. His objections amount to general disagreements with the Report's findings, as he vaguely contends the Report is "based upon a manifest error of law, or facts, and miscarriage of justice and violation of the 5th amendment[], 7th amendment, [and] 14th amendment rights of the [C]onstitution of the [U]nited [S]tate[s] of America." Objections at 1. He avers the Magistrate Judge violated her March 8, 2024, order granting Judge Coble's motion for protective order and suspending all scheduling deadlines pending resolution of the motions to dismiss. But, he fails to identify what, if any, conduct by the Magistrate Judge constitutes such a violation. His objections predominantly rely on arguments made in his motions to recuse and include unmoored references to wholly irrelevant case law.

Because Guess neglects to make any specific objections, the Court can forgo making a de novo review of the record before overruling his objections and accepting the Report. *Orpiano*, 687 F.2d at 47. Nevertheless, in an abundance of caution, the Court has reviewed the Report and record de novo.

Although the Magistrate Judge recommends dismissal of Guess's claims based on insufficient service of process, the Fourth Circuit has advised "[w]hen there is actual notice, every technical violation of the rule or failure of strict compliance may not invalidate the service of process." *Armco, Inc. v. Penrod-Stauffer Bldg. Sys., Inc.*, 733 F.2d 1087, 1089 (4th Cir. 1984). It is undisputed the Defendants had actual notice of Guess's claims, as evidenced by the motions to dismiss filed by Judge Coble, Stout, and Travelers and by a settlement offer Bayne emailed Guess. Guess Reply at Exhibit B. Therefore, the Court turns to the alternative grounds for dismissal noted in the Report.

As the Magistrate Judge explained, Judge Coble is immune from liability for actions taken in his judicial role. *See Mireles v. Waco*, 502 U.S. 9, 11–12 (1991) (noting judicial immunity "is overcome in only two sets of circumstances[,]" for "actions not taken in the judge's judicial capacity" and "for actions, though judicial in nature, taken in the complete absence of all jurisdiction"). Moreover, Guess is unable to show Stout, Travelers, and Bayne are state actors subject to liability under § 1983. *See Rendell-Baker v. Kohn*, 457 U.S. 830, 838 (1982) (explaining a person is subject to suit under § 1983 only where the alleged infringement of federal rights is fairly attributable to the state). Therefore, dismissal of his claim for damages under 42 U.S.C. § 1983 is proper for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6).

Turning to Guess's defamation claim, he fails to identify any defamatory statement made by Defendants. Accordingly, dismissal of that claim is proper for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6).

Therefore, for all these reasons, the Court will overrule Guess's objections.

V. CONCLUSION

After a thorough review of the Report and record in this case under the standards set forth above, the Court overrules Guess's objections, adopts the Report to the extent it does not contradict this Order, and incorporates the Report herein. Therefore, it is the judgment of the Court the Magistrate Judge's decision to deny Guess's second motion to recuse is **AFFIRMED**; the motions to dismiss filed by Judge Coble, Stout, and Travelers are **GRANTED**; the claims against Bayne are **DISMISSED WITHOUT PREJUDICE**; and this matter is **DISMISSED WITHOUT PREJUDICE**.

Because this matter is dismissed, all remaining motions are necessarily **DEEMED AS MOOT**.

IT IS SO ORDERED.

Signed this 22nd day of August 2024, in Columbia, South Carolina.

s/ Mary Geiger Lewis
MARY GEIGER LEWIS
UNITED STATES DISTRICT JUDGE

*****

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within thirty days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

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

Thurmond Guess, Sr., Plaintiff, v. Daniel Coble as Richland County Circuit Court; Morgan Stuart Stout; Travelers, Insurance Company Property, Casualty Insurance Company; Brett Bayne, Defendants.	C/A No. 3:24-68-MGL-PJG **REPORT AND RECOMMENDATION**

Plaintiff Thurmond Guess, Sr., a self-represented litigant, filed this civil rights action, raising claims of due process violations pursuant to 42 U.S.C. § 1983, and state law defamation claims. This matter is before the court pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.) for a Report and Recommendation on the defendants' motions to dismiss.[1] (ECF Nos. 25, 37, 39.) Pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), the court advised Guess of the summary judgment and dismissal procedures and the possible consequences if he failed to respond adequately to the defendants' motions. (ECF Nos. 27 & 41.) The motions are fully briefed and ripe for the court's review. Having reviewed the record presented and the applicable law, the court finds the defendants' motions should be granted and this case dismissed.

BACKGROUND

The following allegations are taken as true for purposes of resolving the defendants' motion to dismiss. Guess filed this case on January 5, 2024 and paid the filing fee. Pursuant to the court's prescreening procedures for *pro se* cases, the court issued an order authorizing the issuance and

[1] Defendant Brett Bayne has not appeared in this action.

service of process against the defendants on January 19, 2024. (ECF No. 7.) The court ordered the Clerk of Court to issue a summons and instructed Guess in bold lettering that he was responsible for service of process under Federal Rule of Civil Procedure 4. Guess was warned that under Rule 4(m), he had ninety days from the date of the order to serve each defendant, and that unserved defendants may be dismissed from the case.

Two weeks prior to the court's authorizing service and the issuance of a summons, Guess mailed the defendants a copy of the Complaint by certified mail. Guess filed a purported proof of service on February 6, 2024. (ECF No. 20.) The document is a single page with copies of certified mail receipts showing that Guess mailed copies of the Complaint to each defendant. Guess also included copies of the certified delivery receipts for Travelers Property Casualty Insurance Company ("Travelers") and Bayne, showing that the certified mail was delivered on January 8, 2024 and January 9, 2024, respectively.

The defendants, except for Bayne, appeared and filed motions to dismiss. The defendants give several grounds for dismissal in each of their motions, but all three defendants who have appeared argue that they have not been properly served with process because they were mailed copies of the original Complaint but no summons.

DISCUSSION

The defendants argue they have not been served with a summons issued by the Clerk of Court, and therefore, this case should be dismissed pursuant to Federal Rules of Civil Procedure 12(b)(5). The court agrees.

A motion pursuant to Federal Rule of Civil Procedure 12(b)(5) is the proper means to challenge the sufficiency of service of process, such as the defendants' nonreceipt of the summons. See 5B Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 1353 (3d ed. Apr.

2021); but see Kyser v. Edwards, Case No. 2:16-cv-05006, 2017 WL 924249, at *3 (S.D.W. Va. Feb. 9, 2017) (finding dismissal appropriate under 12(b)(4) and 12(b)(5) for the non-issuance and non-delivery of a summons), report and recommendation adopted, 2017 WL 891293 (S.D.W. Va. Mar. 6, 2017). Fundamentally, Rule 4 requires that a summons be issued by the Clerk of Court and then served along with a copy of the complaint to effect service. Fed. R. Civ. P. 4(b), (c)(1).

The plaintiff bears the burden of proving that service of process was effected in accordance with Federal Rule of Civil Procedure 4. Richardson v. Roberts, 355 F. Supp. 3d 367, 370 (E.D.N.C. 2019); Ballard v. PNC Fin. Servs. Grp., Inc., 620 F. Supp. 2d 733, 735 (S.D.W. Va. 2009). The provisions of Rule 4 should be liberally construed to effectuate service and uphold the jurisdiction of the court, but the requirements of Rule 4 must also not be ignored. See Scott v. Md. State Dep't of Lab., 673 F. App'x 299, 304 (4th Cir. 2016); Karlsson v. Rabinowitz, 318 F.2d 666, 668 (4th Cir. 1963). Where the plaintiff has failed to effect service, the court has broad discretion to either dismiss the action outright or quash service, retain the case, or order that the plaintiff be given another opportunity to serve the defendant. 5B Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 1354 (3d ed. Apr. 2021).

Here, Guess fails to show that he served the defendants in accordance with Rule 4. Guess shows that he sent a copy of the Complaint by certified mail to each defendant, but he did so prior to the Clerk of Court's issuance of the summons. And, despite the defendants' insistence that they have not properly been served, Guess has not provided any indication or proof that he has corrected this deficiency by serving the issued summons and a copy of the operative pleading on the

defendants, as is his burden. See Richardson, 355 F. Supp. 3d at 370; Ballard, 620 F. Supp. 2d at 735.

Consequently, Guess failed to serve the defendants within ninety days of the court's authorization of service pursuant to Rule 4(m), of which Plaintiff was warned: "If a defendant is not served within 90 days after the complaint is filed, the court . . . must dismiss the action without prejudice against that defendant or order that service be made within a specified time." Fed. R. Civ. P. 4(m). Guess has not sought an extension of time to effect service for good cause shown.[2] And, providing Guess more time to complete service would be futile and ultimately prejudicial to the defendants. See, e.g., Murphy, III v. Turner, Case No. 1:23-cv-02579, 2024 WL 3329049, at *5 (D. Colo. July 8, 2024) (refusing to extend the service deadline under Rule 4(m) for good cause shown where the plaintiff's claims were futile). As the defendants argue in their motions to dismiss, this case is plainly subject to dismissal for numerous reasons. Defendant Coble, a state court judge, is immune from claims for damages for actions he took in his judicial role. See generally Mireles v. Waco, 502 U.S. 9, 11 (1991). Defendants Travelers and Stout are not state actors amenable to suit pursuant to 42 U.S.C. § 1983. See generally West v. Atkins, 487 U.S. 42, 49 (1988). And the court lacks subject matter jurisdiction over a state law defamation claim where the only federal claim listed in the pleading is completely devoid of merit and no diversity jurisdiction exists because both plaintiffs and defendants are citizens of the same state. See Holloway v. Pagan River Dockside Seafood, Inc., 669 F.3d 448, 452-53 (4th Cir. 2012); Burgess v. Charlottesville Sav. & Loan Ass'n, 477 F.2d 40, 43-44 (4th Cir. 1973).

[2] Consequently, Guess's motion for default judgment as to Defendant Bayne should be denied. (ECF No. 43.)

RECOMMENDATION

Based on the foregoing, the court recommends that the defendants' motions to dismiss (ECF Nos. 25, 37, 39) be granted pursuant to Federal Rule of Civil Procedure 12(b)(4) & (5). Plaintiff's claims against Defendant Bayne should be dismissed pursuant to Rule 4(m).[3] All claims should be dismissed without prejudice.

July 10, 2024
Columbia, South Carolina

Paige J. Gossett
UNITED STATES MAGISTRATE JUDGE

The parties' attention is directed to the important notice on the next page.

[3] In light of the court's recommendation, Guess's motion for sanctions and motion for contempt should be denied. (ECF Nos. 29 & 72.)

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
901 Richland Street
Columbia, South Carolina 29201

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).