

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION

ROXANNE V. ZOLIN,  
Plaintiff,

vs.

Case No.: 3:07cv538/RV/EMT

JOSEPH CARUTH, et al.,  
Defendants.

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**REPORT AND RECOMMENDATION**

On March 25, 2008, Plaintiff, proceeding pro se, filed an amended civil complaint pursuant to 28 U.S.C. § 1332 (Doc. 8). Named as Defendants in the amended complaint are: (1) Joseph Caruth, a/k/a Joseph Caruth, Jr. (individually and as president of GoldRush 77 and GoldRush77.com); (2) Gold Rush 77; and (3) Gold Rush77.com (Doc. 8 at 1–2). Now before the court is Plaintiff’s notice of voluntary dismissal as to two of the named Defendants, Joseph Caruth a/k/a Joseph Caruth, Jr. (individually and as president of Gold Rush77), and Defendant Gold Rush77 (Doc. 20).<sup>1</sup>

Rule 41(a)(1)(A)(i) provides that an action may be dismissed without an order of the court by filing a notice of dismissal at any time before the adverse party serves an answer or files a motion for summary judgment. Because neither of the Defendants Plaintiff seeks to dismiss has been served in the instant case, it is clear that Plaintiff is automatically entitled to a voluntary dismissal at this time as to those Defendants. Therefore, Defendants Joseph Henry Caruth, Jr. (individually and as president of Gold Rush77) and Gold Rush77 should be terminated as Defendants in this case; and the docket should reflect that Defendant Gold Rush 77.com is the only remaining Defendant.

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<sup>1</sup>The court notes that Plaintiff has effected service only on Defendant Gold Rush77.com (*see, e.g.*, Doc. 19).

Accordingly, it is respectfully **RECOMMENDED**:

1. That Plaintiff's notice of voluntary dismissal against Defendants Joseph H. Caruth, Jr. and Gold Rush77 (Doc. 20) be **GRANTED**.

2. That the clerk be directed to change the docket to reflect that Defendants Joseph H. Caruth, Jr. and Gold Rush 77 are terminated as Defendants in this cause of action, and that the only remaining Defendant is Gold Rush 77.com.

At Pensacola, Florida, this 6<sup>th</sup> day of January 2009.

*/s/ Elizabeth M. Timothy*

**ELIZABETH M. TIMOTHY**

**UNITED STATES MAGISTRATE JUDGE**

**NOTICE TO THE PARTIES**

**Objections to these proposed findings and recommendations may be filed within ten (10) days after being served a copy thereof. Any different deadline that may appear on the electronic docket is for the court's internal use only. A copy of objections shall be served upon the magistrate judge and all other parties. Failure to object may limit the scope of appellate review of factual findings. See 28 U.S.C. § 636; United States v. Roberts, 858 F.2d 698, 701 (11th Cir. 1988).**