UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 2:24-cv-14228-KMM

GENNARO MARITATO,

Plaintiff,

v.

PTI,

Defendant.
_____/

ORDER

THIS CAUSE came before the Court upon the Report and Recommendation of the Honorable Ryon M. McCabe, United States Magistrate Judge. ("R&R") (ECF No. 7). The matter was referred to Magistrate Judge McCabe, pursuant to 28 U.S.C. § 636 and the Magistrate Judge Rules of the Local Rules of the Southern District of Florida, to take all necessary and proper action as required by law regarding all pre-trial, non-dispositive matters and for a Report and Recommendation on any dispositive matters. (ECF No. 6). Magistrate Judge McCabe issued a R&R, recommending that Plaintiff's *pro se* Application to Proceed *In Forma Pauperis* (ECF No. 3) be GRANTED and that Plaintiff's Complaint (ECF No. 1) be DISMISSED without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B). Neither Defendant nor Plaintiff objected to the R&R. The matter is now ripe for review. As set forth below, the Court ADOPTS the R&R.

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); Fed. R. Civ. P. 72(b)(3). The Court "must determine *de novo* any part of the magistrate judge's disposition that has been properly objected to." Fed. R. Civ. P. 72(b)(3). A *de novo* review is therefore required if a party

files "a proper, specific objection" to a factual finding contained in the report. *Macort v. Prem, Inc.*, 208 F. App'x 781, 784 (11th Cir. 2006). "It is critical that the objection be sufficiently specific and not a general objection to the report" to warrant *de novo* review. *Id.*

Yet when a party has failed to object or has not properly objected to the magistrate judge's findings, "the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *See Keaton v. United States*, No. 14-21230-CIV, 2015 WL 12780912, at *1 (S.D. Fla. May 4, 2015); *see also Lopez v. Berryhill*, No. 17-CV-24263, 2019 WL 2254704, at *2 (S.D. Fla. Feb. 26, 2019) (stating that a district judge "evaluate[s] portions of the R & R not objected to under a clearly erroneous standard of review" (citing *Davis v. Apfel*, 93 F. Supp. 2d 1313, 1317 (M.D. Fla. 2000))).

This is a patent infringement case. *See* (ECF No. 1). The Complaint consists of one sentence: "I have a design patent on a ski board that resembles a product manufactured by Defendant." (ECF No. 1) at 4. Accordingly, Magistrate Judge McCabe finds that the Complaint does not set forth sufficient facts to state any plausible legal cause of action, leaving "basic questions unanswered." R&R at 3. Magistrate Judge McCabe recommends that the Court (1) find that Plaintiff meets the necessary financial standard to proceed *in forma pauperis*, and (2) dismiss the Complaint without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B) for failure to state a claim. *See* R&R at 3–4.

The Court received no objections to the aforementioned findings in the R&R. Upon a review of the record, the Court finds no clear error with Magistrate Judge McCabe's findings.

Accordingly, UPON CONSIDERATION of the R&R, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that the R&R (ECF No. 7) is ADOPTED. Plaintiff's *pro se* Application to Proceed *In Forma Pauperis*

(ECF No. 3) is GRANTED. Plaintiff's Complaint (ECF No. 1) is DISMISSED WITHOUT PREJUDICE. Plaintiff may file an Amended Complaint to attempt to cure the deficiencies identified in the R&R no later than September 18, 2024.

DONE AND ORDERED in Chambers at Miami, Florida, this 28th day of August, 2024.

K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

c: All counsel of record