

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

DAVID M. GRIGGS,	:	
	:	CIVIL ACTION NO. 3:17-0208
Plaintiff	:	
	:	(JUDGE MANNION)
v.	:	
FEDERAL BUREAU OF	:	
PRISONS, <u>et al.</u>,	:	
	:	
Defendants	:	

MEMORANDUM

Pending before the court is the report of Chief Magistrate Judge Susan E. Schwab, which recommends that the plaintiff’s complaint be dismissed for failure to state a claim upon which relief can be granted, as well as for the plaintiff’s failure to prosecute this action. (Doc. 6). There are no objections to Judge Schwab’s report.

By way of relevant background, on February 3, 2017, the plaintiff filed the instant action alleging inadequate medical care for various conditions. (Doc. 1). By order dated May 23, 2017, Judge Schwab noted the deficiencies of the plaintiff’s filing and granted the plaintiff time to file an amended complaint to cure those deficiencies. (Doc. 3). The plaintiff subsequently requested, and was granted, additional time to file an amended complaint; however, no amended complaint was filed.

On September 15, 2017, Judge Schwab issued the instant report in which she considered the plaintiff's filing both pursuant to the Federal Tort Claims Act, ("FTCA"), 28 U.S.C. §2671, et seq., as well as pursuant to Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971). Judge Schwab determined that the plaintiff had failed to state a claim under either consideration and, as such, recommends dismissal of the plaintiff's action on this basis. Moreover, Judge Schwab notes the plaintiff's failure to file an amended complaint despite having been given the opportunity to do so, and recommends dismissal of the plaintiff's action on the alternative basis of failure to prosecute.

Judge Schwab's report was mailed to the plaintiff at the address provided by the plaintiff in his complaint. On September 27, 2017, the docket reflects that the plaintiff's mail was returned as undeliverable. (Doc. 7). Upon review of the Bureau of Prisons' ("BOP") Inmate Locator, the court has learned that the plaintiff was released on August 1, 2017. Contrary to the provisions of the Local Rules of Court for the Middle District of Pennsylvania,

and specifically Local Rule 83.18¹, the plaintiff failed to notify the court of his current whereabouts.

For those sections of a report and recommendation to which no objection is made, the court should, as a matter of good practice, “satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Fed. R. Civ. P. 72(b), advisory committee notes; see also Univac Dental Co. v. Dentsply Intern., Inc., 702 F.Supp.2d 465, 469 (M.D.Pa. 2010) (citing Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); Local Rule 72.31.

In this case, the court has reviewed the report of Judge Schwab and agrees with the sound reasoning which forms the basis of her

¹ Local Rule 83.18 provides, in relevant part, that “[w]henver a party by whom or on whose behalf an initial paper is offered for filing is not represented in the action, such party shall maintain on file with the clerk a current address at which all notices and copies of pleadings, motions or papers in the action may be served upon such party.”

recommendation. The court finds no clear error on the face of the record and, as such, will adopt Judge Schwab's report in its entirety. The court notes that Judge Schwab has recommended that the plaintiff's complaint be dismissed for his failure to prosecute in that he failed to file an amended complaint as directed. An added basis for dismissing the plaintiff's complaint for failure to prosecute is his failure to keep the court apprised of his current address as required by Local Rule 83.18.

An appropriate order shall issue.

s/Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

Date: October 3, 2017

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