

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

FRANCIS PERFILIO,	:	
	:	CIVIL ACTION NO. 3:17-1132
Plaintiff	:	
	:	(JUDGE MANNION)
v.	:	
RALPH DEL RUSSO,	:	
	:	
Defendant	:	

MEMORANDUM

Pending before the court is the report of Magistrate Judge Joseph F. Saporito, Jr., which recommends that a letter filed by the plaintiff on August 28, 2017, (Doc. 10), be construed as a notice of voluntary dismissal pursuant to Fed.R.Civ.P. 41(a)(1)(A)(i) and that the instant action be dismissed without prejudice pursuant to Fed.R.Civ.P. 41(a)(1). (Doc. 11). No objections have been filed to Judge Saporito's report.

By way of relevant background, the plaintiff filed the instant action on June 9, 2017. (Doc. 1). After paying the appropriate filing fee, the Clerk of Court issued a summons to permit the plaintiff to effectuate service upon the defendant. (Doc. 5).

On July 18, 2017, the plaintiff filed proof of service upon the defendant. (Doc. 6). On July 26, 2017, the defendant, through counsel, entered his

appearance and filed a motion to quash service, arguing that service was not proper effectuated. (Doc. 7, Doc. 8).

On August 28, 2017, the court received a letter from the plaintiff in which he indicated that he “[did] not wish to submit [his] case to the United States District Court, or conform to its rules.” (Doc. 10). Instead, the plaintiff indicates that he filed his “claim” in “Federal Court” and that his case “is not to be opened for the inspection of the United States District Court at any time.” The plaintiff demands that this court “close [his] case, and pull the United States District Court out of [his] case immediately.” He further threatens that, if his case is not closed, he will “hold [Judge Saporito] personally liable for trespass upon [his] case.”

On September 22, 2107, Judge Saporito issued the instant report. In his report, Judge Saporito states that, although he does not cite to the rule, it is clear that the intent of the plaintiff’s letter was to effect the voluntary dismissal of this action, without prejudice, pursuant to Fed.R.Civ.P. 41(a)(1). Judge Saporito provides that the plaintiff’s letter, liberally construed as a notice of voluntary dismissal, is “self-effectuating” and thus acts to terminate this action. As such, Judge Saporito recommends that the plaintiff’s letter be construed as a notice of voluntary dismissal pursuant to Fed.R.Civ.P. 41(a)(1)(A)(i) and that

the instant action be dismissed without prejudice. The plaintiff has failed to file any timely objections to Judge Saporito's report.

For those sections of the 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.

The court has reviewed the report of Judge Saporito and the sound reasoning which led to his recommendation. The court finds no clear error on the face of the record. As such, the court will adopt the report in its entirety.

Moreover, as a final matter, in light of Judge Saporito's report, the defendant's motion to quash, (Doc. 7), will be dismissed as moot. An appropriate order shall issue.

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

Date: October 12, 2017

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