

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

RITA MENDEZ,	:	
	:	
Plaintiff	:	CIVIL ACTION NO. 3:18-391
	:	
v.	:	(MANNION, D.J.)
	:	(ARBUCKLE, M.J.)
MCDONALD'S RESTAURANT,	:	
	:	
Defendant	:	

ORDER

Pending before the court is the report of Magistrate Judge William I. Arbuckle which recommends that the plaintiff's application to proceed *in forma pauperis* be granted and her complaint be dismissed without prejudice. (Doc. 4). Although the plaintiff filed correspondence subsequent to Judge Arbuckle's report, (Doc. 5, Doc. 6), she has not filed any substantive objections to the report.

By way of relevant background, the plaintiff filed the instant action, *pro se*, on February 6, 2018, alleging that she is a disabled person suffering from Type II Diabetes. (Doc. 1, Attachment 1). The plaintiff alleges that, on December 20, 2017, her blood sugar was low and she needed something to eat. As a result, the plaintiff alleges that she went into a McDonald's restaurant in Stroudsburg, Pennsylvania, to get something to eat. Although there was no one else in line, the plaintiff alleges that the cashier ignored her and did not ask her if she wanted to order anything, even after the plaintiff

informed the cashier that she had low blood sugar. The plaintiff apparently became light headed and passed out. Even after she passed out, the plaintiff alleges that the cashier failed to help her. The plaintiff alleges in her complaint that the cashier's actions created a health risk because her sugar level was low. In addition, the plaintiff alleges that she suffered embarrassment. The plaintiff is seeking monetary and injunctive relief.

In giving the plaintiff's complaint preliminary consideration pursuant to the provisions of 28 U.S.C. §1915(e)(2)¹, Judge Arbuckle finds that, even liberally construing the plaintiff's *pro se* complaint, the complaint fails to state a claim upon which relief can be granted. In this regard, Judge Arbuckle notes that the complaint fails to comply with Fed.R.Civ.P. 8, in that it does not set forth a "short and plain statement of the cause of action and a claim showing that the pleader is entitled to relief." Fed.R.Civ.P. 8(a). Specifically, Judge Arbuckle observes that nowhere in the plaintiff's complaint does she identify a cause of action under any state or federal law or set forth any well-pleaded facts to support any legal claims against McDonald's. To the extent that the plaintiff was contemplating a claim under the Americans with Disabilities Act ("ADA"), based upon her allegations of disability, Judge Arbuckle notes that

¹The plaintiff has filed a motion to proceed *in forma pauperis*, (Doc. 1), which Judge Arbuckle recommends be granted.

the plaintiff failed identify that claim in her complaint and further failed to plead any facts which would support such a claim. Given this, Judge Arbuckle recommends that the plaintiff's complaint be dismissed, without prejudice, to allow the plaintiff an opportunity to file an amended complaint which properly identifies her claim(s) and sets forth well-pleaded facts which comply with the requirements of Fed.R.Civ.P. 8.

When no objections are filed to a report and recommendation, 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 reasons presented by Judge Arbuckle in support of his recommendation and agrees with the sound reasoning that led Judge Arbuckle to the conclusions in his report. The court agrees that, as presented, the plaintiff's complaint fails to state a claim upon which relief can

be granted. As such, the undersigned finds no clear error on the face of the record and will adopt Judge Arbuckle's report in its entirety.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

- (1) The report and recommendation of Judge Arbuckle, (**Doc. 4**), is **ADOPTED IN ITS ENTIRETY**.
- (2) The plaintiff's motion to proceed *in forma pauperis*, (**Doc. 1**), is **GRANTED**.
- (3) The plaintiff's complaint is **DISMISSED WITHOUT PREJUDICE**.
- (4) The plaintiff shall file an amended complaint on or before **January 2, 2019**.
- (5) The instant action is **REMANDED** to Judge Arbuckle for consideration of the plaintiff's amended complaint and for any necessary pre-trial matters.

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

Date: December 10, 2018

O:\Mannion\shared\ORDERS - DJ\CIVIL ORDERS\2018 ORDERS\18-391-01.wpd