

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

<p>JASON DICE,</p> <p style="padding-left: 40px;">Plaintiff,</p> <p style="padding-left: 80px;">v.</p> <p>VYAIRE MEDICAL, INC.,</p> <p style="padding-left: 40px;">Defendant.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Case No. 2:17-cv-1678</p> <p>Judge David Stewart Cercone Magistrate Judge Lisa Pupo Lenihan</p> <p>ECF No. 20</p>
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MEMORANDUM ORDER

The Complaint in the above captioned case was received by the Clerk of Court on December 29, 2017, upon removal from the Court of Common Pleas of Allegheny County, Pennsylvania, and was referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. §636(b)(1), and Local Rules of Court 72.C and 72.D.

The Magistrate Judge's Report and Recommendation (ECF No. 35), filed on April 12, 2018, recommended that the Motion to Dismiss Defendant's Counterclaim (ECF No. 20) filed by Plaintiff Jason Dice be denied. Service was made on all counsel of record. On May 1, 2018, the Magistrate Judge filed a corrected Report and Recommendation (see Errata, ECF No. 36), in which the only change was to add the notice to the parties of their right to file objections to the report and recommendation. Service of the corrected Report and Recommendation (ECF No. 36) was made on all counsel of record. In the corrected Report and Recommendation, the parties were informed that in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule

72.D.2 of the Local Rules of Court, that they had fourteen (14) days to file any objections. No objections have been filed to the Report and Recommendation to date.

After review of the pleadings and documents in the case, together with the Report and Recommendation, the following Order is entered:

AND NOW, this 31st day of May, 2018,

IT IS HEREBY ORDERED that the Motion to Dismiss Defendant's Counterclaim (ECF No. 20) filed by Plaintiff Jason Dice is **DENIED**.

IT IS FURTHER ORDERED that the corrected Report and Recommendation (ECF No. 36) of Magistrate Judge Lenihan dated May 1, 2018, is adopted as the opinion of the Court.



David Stewart Cercone
Senior United States District Judge

cc: Chelsea Dice, Esquire
David J. Kiefer, Esquire
Aaron M. Scott, Esquire
Elizabeth A. Patton, Esquire
Robert C. Castle, Esquire