

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

NARSEAL BATISTE,

Plaintiff,

v.

CIVIL ACTION NO. 5:12-cv-01223

FEDERAL BUREAU OF PRISONS AT
BECKLEY, INST.,

Defendant.

**MEMORANDUM OPINION AND ORDER
ADOPTING PROPOSED FINDINGS AND RECOMMENDATION**

The Court has reviewed the Plaintiff's April 19, 2012 letter inquiring how to file "a medical complaint" against the Federal Bureau of Prisons at Beckley regarding the medical treatment he has received following an "abdominal ailment." (Letter from Narseal Batiste to Clerk of Court (March 31, 2012) (Document 1)). In response to the letter, the Clerk of Court docketed the letter as a letter-form Complaint, informed Plaintiff that the letter was not in the proper form to serve as a Complaint, and provided him with instructions and forms regarding the initiation of a Bivens Action. (Letter from Teresa L. Deppner, Deputy Clerk of Court to Narseal Batiste (April 19, 2012) (Document 3)). Importantly, Plaintiff was directed to complete the requisite forms and return them to the Court within 30 days. (*Id.*) On May 1, 2012, the Plaintiff forwarded another letter to the Court wherein he stated, in pertinent part, the following:

I respectfully submit it is not my desire to pursue a Bivens action or
civil suit at this time. As a matter of fact, I am still in the process of

exhausting my administrative remedy process within the BOP. . . . Moreover, in light of the fact I am still attempting to receive adequate medical attention to my know [sic] serious medical needs protected by the Eighth Amendment, any anticipated civil action will have to be put hold [sic] at this time. Hence, my desire to have said case number 'withdrawn' from the docket at this time.

(Letter from Narseal Batiste to Teresa L. Deppner, Clerk of Court (April 26, 2012) (Document 4)).

By *Standing Order* (Document 2) entered on April 19, 2012, this action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. On May 2, 2012, the Magistrate Judge submitted *Proposed Findings and Recommendation* (Document 5) wherein it is recommended that this Court view Plaintiff's May 1, 2012 letter as a request for voluntary dismissal of this action, pursuant to Rule 41(a)(1)(A) of the Federal Rules of Civil Procedure, and that the matter be dismissed pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure without prejudice and removed from the Court's docket.

The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and the Plaintiff's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). In his PF&R, Magistrate Judge VanDervort advised the parties that any objections to the PF&R were due within seventeen (17) days of the filing of the proposed findings and recommendation. Consequently, any objections to the PF&R were due on May 21, 2012. To date, no party has filed any objections to the Magistrate Judge's Proposed Findings and Recommendation.

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the Proposed Findings and Recommendation, and **ORDERS** that Plaintiff's letter-form Motion to Withdraw Complaint (Document 4) be **GRANTED**, Plaintiff's letter-form Complaint (Document 1) be **DISMISSED WITHOUT PREJUDICE** and that this matter be **REMOVED** from the Court's docket.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge VanDervort, counsel of record, and any unrepresented party.

ENTER: June 14, 2012

A handwritten signature in blue ink, reading "Irene C. Berger". The signature is written in a cursive style with a horizontal line underneath the name.

IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA