

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

GEORGE WILLIE BUFORD,

Plaintiff,

v.

GENE BEASLEY, et al.,

Defendants.

CIVIL ACTION NO. 1:19-CV-00377

(WILSON, J.)
(MEHALCHICK, M.J.)

REPORT AND RECOMMENDATION

I. BACKGROUND

Pro se plaintiff George Willie Buford, an inmate currently incarcerated at United States Penitentiary (USP) Coleman I, commenced this 42 U.S.C. § 1983 civil rights action on March 5, 2019, asserting various claims against USP Allenwood staff for allegedly depriving him of medical treatment, among other claims. ([Doc. 1](#)).¹

On August 26, 2019, Buford filed with the Court a submission styled “VOLUNTARY WITHDRAWAL,” indicating, “Plaintiff in the above-captioned Case or Controversy arising under Article III of the Constitution for the United States of America [] hereby VOLUNTARILY WITHDRAWS this Action.” ([Doc. 19, at 1](#)). In the caption of that submission, however, Buford handwrote docket number 3:19-CV-02364 rather than the instant docket number, i.e., 1:19-CV-00377. Because there are no open cases docketed under 3:19-CV-02364 in the United States District Court for the Middle District of Pennsylvania, the Court

¹ After filing his complaint, Buford moved for leave to proceed *in forma pauperis*, the Court directed him to provide a statement of the current balance in his prisoner account and related records, and Buford complied. ([Doc. 6](#); [Doc. 11](#); [Doc. 12](#); [Doc. 13](#); [Doc. 14](#)).

ordered Buford to submit a letter confirming that he wishes to voluntarily withdraw his complaint filed under docket number 1:19-CV-00377. (Doc. 20). Buford was given 30 days from November 22, 2019, to comply with the Court's Order but has failed to do so as of this date.

II. DISCUSSION

The Court has an obligation to liberally construe *pro se* pleadings and other submissions. See, e.g., *Mala v. Crown Bay Marina, Inc.*, 704 F.3d 239, 244-46 (3d Cir. 2013). While Buford did not move to withdraw his claim pursuant to any particular statutory provision or other applicable authority – and though he failed to indicate the correct docket number – the unambiguous language of his August 26, 2019 submission suggests that he seeks to voluntarily dismiss *this* action in accordance with Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure. (Doc. 19). His failure to comply with the Court's November 2019 serves as confirmation of his intention to dismiss the above-captioned action and not any other.²

Rule 41(a) “allows a plaintiff who complies with its terms to dismiss an action voluntarily and without court intervention.” *Manze v. State Farm Ins. Co.*, 817 F.2d 1062, 1065 (3d Cir. 1987). Specifically, Rule 41(a) provides, in relevant part:

[T]he plaintiff may dismiss an action without a court order by filing . . . a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment. . . . Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.

Fed. R. Civ. P. 41(a)(1)(A)(i), (B).

² The only other open case Buford filed in this District is a petition for a writ of habeas corpus filed under docket number 1:18-CV-02367.

“This right of the plaintiff is ‘unfettered’. . . . A proper notice deprives the district court of jurisdiction to decide the merits of the case.” *In re Bath & Kitchen Fixtures Antitrust Litig.*, 535 F.3d 161, 165-66 (3d Cir. 2008) (citations omitted). Moreover, “the notice results in dismissal without prejudice (unless it states otherwise), as long as the plaintiff has never dismissed an action based on or including the same claim in a prior case.” *In re Bath & Kitchen Fixtures*, 535 F.3d at 165. The effect of filing a Rule 41(a)(1) notice of voluntary dismissal before service of an answer or a motion for summary judgment is “automatic: the defendant does not file a response, and no order of the district court is needed to end the action.” *In re Bath & Kitchen Fixtures Antitrust Litig.*, 535 F.3d at 165.

In applying Rule 41(a)(1)(A)(i) to the matter *sub judice*, the undersigned finds that Buford’s August 26, 2019 submission sufficiently operates as a notice of voluntary dismissal of this action, as he filed the notice prior to defendants serving an answer or a motion for summary judgment. Furthermore, this notice results in a dismissal without prejudice because it appears that Buford has never dismissed an action based on or including the same claim in a prior case. Accordingly, Buford’s Rule 41(a)(1)(A)(i) notice of voluntary dismissal is “self-effectuating” and thus acts to terminate the action.

III. RECOMMENDATION

Based on the foregoing, it is recommend that:

1. Buford’s August 26, 2019 submission styled “VOLUNTARY WITHDRAWAL” (Doc. 19) be **CONSTRUED** as a notice of voluntary dismissal pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i);
2. This action be **DISMISSED WITHOUT PREJUDICE** at the request of the Buford pursuant to Fed. R. Civ. P. 41(a)(1);
3. Buford’s pending application for leave to proceed *in forma pauperis* (Doc. 6) be **DENIED AS MOOT**; and

4. The Clerk of the Court be directed to **CLOSE** this case.

Dated: May 19, 2020

s/ Karoline Mehalchick
KAROLINE MEHALCHICK
United States Magistrate Judge

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NOTICE

NOTICE IS HEREBY GIVEN that the undersigned has entered the foregoing **Report and Recommendation** dated **May 19, 2020**.

Any party may obtain a review of the Report and Recommendation pursuant to Rule 72.3, which provides:

Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in [28 U.S.C. § 636\(b\)\(1\)\(B\)](#) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

Dated: May 19, 2020

s/ Karoline Mehalchick
KAROLINE MEHALCHICK
United States Magistrate Judge