

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

JOHN M. GERA,

Plaintiff,

v.

BOROUGH OF FRACKVILLE, *et al.*,

Defendants.

CIVIL ACTION NO. 3:20-CV-00469

(MARIANI, J.)  
(MEHALCHICK, M.J.)

**REPORT AND RECOMMENDATION**

*Pro se* Plaintiff John M. Gera (“Gera”) filed the instant civil rights action on March 20, 2020, asserting various claims against the Borough of Frackville (the “Borough”) and four Borough officials: Solicitor Mark Semanchik, Esq., Police Chief Richard Bell, Police Officer Devin Buccieri, and Secretary Brenda Deeter (collectively, “Defendants”). ([Doc. 1](#), at 1-2). On May 3, 2022, Gera filed an amended complaint, asserting claims for civil rights violations, criminal conspiracy, harassment, slander and defamation, pain and suffering, and intentional infliction of emotional distress (“IIED”) against the aforementioned Defendants. ([Doc. 34](#), at 10-32). Before the Court is a motion for reconsideration of the Court’s Order of March 31, 2023. ([Doc. 49](#); [Doc. 50](#)).

**I. BACKGROUND AND PROCEDURAL HISTORY**

Gera commenced the instant action on March 20, 2020. ([Doc. 1](#)). Summons was issued and provided to Gera, who served Defendants by sending copies of the summons and complaint on March 27, 2020, and filed his first proof of service of process on April 10, 2020. ([Doc. 4](#)). Defendants moved to dismiss his claim on May 5, 2020. ([Doc. 5](#)). On May 7, 2020, Gera filed his motion for entry of default judgment; on May 7, 2020, he filed his motion for

summary judgment; and on May 22, 2020, he filed a second proof of service reflecting that the Schuylkill Sheriff's Department had served Defendant in person on May 18, 2020. ([Doc. 5](#); [Doc. 8](#); [Doc. 11](#); [Doc. 17](#)). The Court issued an Order on April 4, 2022, granting Defendant's motion to dismiss Gera's amended complaint without prejudice. ([Doc. 31](#)). The Order also denied Gera's motion for summary judgment without prejudice as premature and denied Gera's first and second motions for entry of default. ([Doc. 31](#)).

On May 3, 2022, Gera filed an amended complaint. ([Doc. 34](#)). On May 18, 2022, Defendants filed a motion to dismiss Gera's amended complaint and brief in support on May 19, 2022. ([Doc. 35](#); [Doc. 36](#)). On June 23, 2022, Gera filed a motion for summary, a statement of facts, and a brief in support of his motion for summary judgment. ([Doc. 39](#); [Doc. 40](#); [Doc. 41](#)). The Court issued an Order on March 31, 2023, granting Defendant's motion to dismiss Gera's amended complaint without prejudice. ([Doc. 49](#)). The Order also denied Gera's motion for summary judgment without prejudice as premature and denied Gera's third motion for entry of default. ([Doc. 49](#)).

Gera filed a motion for reconsideration of the Court's Order dismissing Gera's amended complaint on April 26, 2023, and a brief in support on the same day. ([Doc. 50](#); [Doc. 51](#)). In his motion for reconsideration, Gera specifically requests the Court reconsider its rulings dismissing Gera's entry of default and motion for summary judgment. ([Doc. 50, at 1](#)). On May 10, 2023, the Borough filed a brief in opposition to Gera's motion for reconsideration. ([Doc. 53](#)). On May 22, 2023, Gera filed a reply brief to the Borough's brief in opposition. ([Doc. 54](#)).

## II. MOTION FOR RECONSIDERATION STANDARD

A motion for reconsideration is a device of limited utility and may only be used to correct manifest errors of law or fact or to present newly discovered precedent or evidence. *Harasco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir.1985), *cert. denied*, 476 U.S. 1171, 106 (1986). In order to prevail, a party seeking reconsideration must demonstrate one of the following: “(1) an intervening change in the controlling law; (2) the availability of new evidence that was not available previously; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice.” *Max's Seafood Café v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999). “With regard to the third ground, . . . any litigant considering bringing a motion to reconsider . . . should evaluate whether what may seem to be a clear error of law is in fact simply a point of disagreement between the Court and the litigant.” *Dodge v. Susquehanna Univ.*, 796 F. Supp. 829, 830 (M.D. Pa. 1992) (citation omitted). “A motion for reconsideration is not to be used as a means to reargue matters already argued and disposed of or as an attempt to relitigate a point of disagreement between the Court and the litigant.” *Ogden v. Keystone Residence*, 226 F. Supp. 2d 588, 606 (M.D. Pa. 2002) (internal citation omitted).

## III. DISCUSSION

As noted above, Gera seeks reconsideration of the Court's March 31<sup>st</sup> Order denying Gera's motion for summary judgment and third motion for entry of default. (Doc. 49).

Gera maintains that he is entitled to entry of default and/or summary judgment because Defendants failed to respond to his second proof of service<sup>1</sup> and amended complaint.<sup>2</sup> (Doc. 51, ¶¶ 36-37). He also avers that “FRCP Rule 56, Does NOT state that Discovery needs to be done before the Court can Grant Summary Judgment.” (Doc. 51, ¶ 43). He further argues that he is entitled to summary judgment because “Gera shows there is NO genuine dispute as to any material fact, based on the fact FB cannot produce any admissible evidence or enter any defense, because FB failed to enter a response to Gera’s Second Served New Complaint, May 18, 2020.” (Doc. 51, ¶ 45).

Here, Gera’s motion for reconsideration fails to meet narrowly-defined factors governing motions for reconsideration because it does not identify an intervening change in controlling law, provide any evidence that was not previously available to this Court, or show the need to correct a clear error of law or prevent manifest injustice. *Arnold v. Smith, No. 1:19-CV-750, 2020 WL 362691, at \*5 (M.D. Pa. Jan. 22, 2020)*. Rather, Gera seeks to reassert the same arguments set forth in his original motions. (Doc. 32; Doc. 33; Doc. 39; Doc 40). As the Court has already demonstrated, Defendants’ response to the amended complaint was timely

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<sup>1</sup> To the extent that Gera asserts Defendants failed to respond to his second proof of service (Doc. 17), Defendants responded to Gera’s original complaint (Doc. 1) with a motion to dismiss. (Doc. 5). Contrary to Gera’s argument, his second proof of service does not constitute a first amended complaint. Rather, his second proof of service demonstrates that Defendants were properly served on May 18, 2020, just under 60 days after Gera had filed his original complaint pursuant to Fed. R. Civ. P. 4(m).

<sup>2</sup> Gera filed his amended complaint on May 3, 2022. (Doc. 34). In its report and recommendation, the undersigned found that Defendants responded by filing a motion to dismiss on May 18, 2022, in accordance with Rule 12(a)(1)(A) of the Federal Rules of Civil Procedure. (Doc. 35); Fed. R. Civ. P. 12(a)(1)(A) (“A defendant must serve an answer: (i) within 21 days after being served with the summons and complaint; or (ii) if it has timely waived service under Rule 4(d), within 60 days after the request for a waiver was sent”). (Doc. 45).

and thus, entry of default judgment would not be appropriate as Defendants have defended the suit by filing a timely motion to dismiss (Doc. 35) and have otherwise participated in the litigation process. *Lomma v. Ohio Nat'l Life Assurance Corp.*, No. 3:16-CV-2396, 2018 WL 8344839, at \*1 (M.D. Pa. Jan. 4, 2018) (determining entry of default judgment was not appropriate where Defendants have defended the suit by filing a timely motion to dismiss, a timely motion for summary judgment, and otherwise participated in the litigation process). Furthermore, as Gera's amended complaint was dismissed without prejudice, Gera's motion for summary judgment is premature. Thus, Gera's arguments are meritless and insufficient to warrant reconsideration.

Accordingly, this *pro se* motion for reconsideration should be **DENIED**.

IV. **RECOMMENDATION**

For the foregoing reasons, it is respectfully recommended that Plaintiff's motion for reconsideration be **DENIED** (Doc. 50).

**BY THE COURT:**

**Dated: June 12, 2023**

*s/ Karoline Mehalchick*  
**KAROLINE MEHALCHICK**  
**United States Magistrate Judge**

UNITED STATES DISTRICT COURT  
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(MARIANI, J.)  
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**NOTICE**

**NOTICE IS HEREBY GIVEN** that the undersigned has entered the foregoing **Report and Recommendation** dated **June 12, 2023**. 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: June 12, 2023

*s/ Karoline Mehalchick*

**KAROLINE MEHALCHICK**  
**Chief United States Magistrate Judge**