

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

WAYNE A. SILVA,	:	
Plaintiff,	:	
	:	
v.	:	C.A. No. 18-650JJM
	:	
ROBERT M. FARRELL,	:	
Defendant.	:	

REPORT AND RECOMMENDATION

PATRICIA A. SULLIVAN, United States Magistrate Judge.

On January 10, 2019, Plaintiff made a filing that the Clerk's office captioned as a motion for reconsideration¹ of the Court's text orders of December 31, 2018, in which it denied as moot Plaintiff's motion to proceed *in forma pauperis* and dismissed the case. The motion has been referred to me for determination. 28 U.S.C. § 636(b)(1)(A).

Based on Fed. R. Civ. P. 8(d),² the motion appears to argue (1) that the Court ignored Plaintiff's Fed. R. Civ. P. 12(e) motion³ for a more definite statement "of report and recommendation" on which the text orders were based, to bring it into compliance with the requirement that party allegations must be concise and direct pursuant to Fed. R. Civ. P. 8(d); (2) that the text orders are not signed as required by Fed. R. Civ. P. 11 and should be stricken; and (3) that Plaintiff's motion for *in forma pauperis* status should be granted. No new facts are presented in support of the motion for reconsideration.

¹ As with all of Plaintiff's filings, the Court has read this new "motion" with the leniency appropriate for any *pro se* filer. Erickson v. Pardus, 551 U.S. 89, 94 (2007).

² Rule 8 sets out the general rules of pleading. Fed. R. Civ. P. 8. In subpart d, the Rule addresses the obligation of a party to make allegations that are simple, concise and direct, while permitting alternative statements and inconsistent claims or defenses. Fed. R. Civ. P. 8(d).

³ No such motion appears in the record. Mindful of the obligation to read Plaintiff's filings with leniency, the Court interprets this as an argument on reconsideration pursuant to Rules 8(d) and 12(e) that the Court should have ordered that the report and recommendation be restated to be more concise and direct. Fed. R. Civ. P. 8(d), 12(e).

As a request seeking reconsideration, Plaintiff's new motion must overcome the well-established principle that "[t]he granting of a motion for reconsideration is 'an extraordinary remedy which should be used sparingly.'" Bowling v. Hasbro, Inc., C.A. No. 05-229S, 2008 WL 169693, at *1 (D.R.I. Jan. 16, 2008) (quoting Palmer v. Champion Mortg., 465 F.3d 24, 30 (1st Cir. 2006)). "Unless the court has misapprehended some material fact or point of law, such a motion is normally not a promising vehicle for revisiting a party's case and rearguing theories previously advanced and rejected." Palmer, 465 F.3d at 30. To succeed on a motion for reconsideration, a movant "must demonstrate either that newly discovered evidence (not previously available) has come to light or that the rendering court committed a manifest error of law." Id. Having carefully considered Plaintiff's arguments based on Rules 8(d), 11 and 12(e), I find that all are inapt in that those Rules are addressed to the filings of parties, not to decisions of the Court. Fed. R. Civ. P. 8(d), 11, 12(e). Because Plaintiff's motion for reconsideration identifies no new evidence and no manifest error of law, by text order entered today, the Court has denied it for the reasons stated above.

While the motion for reconsideration is a matter referred for determination, which has been accomplished by text order, I am issuing this report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B) to recommend that the Court now enter an injunction. Specifically, based on the frivolous nature of Plaintiff's motion for reconsideration, and based on Plaintiff's pattern of filing frivolous post-judgment motions in Silva v. Thornton, C.A. No. 18-95WES, as well as in a related Massachusetts case,⁴ I recommend that, except for a notice of appeal and a single motion for relief from judgment or order in compliance with Fed. R. Civ. P. 60, the Court enter

⁴ The details of Plaintiff's post-judgment filing conduct are laid out in ECF No. 3 at 2-3 (summarizing post-judgment filings in cases in Massachusetts and Rhode Island).

an injunction barring Plaintiff from filing any further motions or other documents in this matter without first obtaining permission from a judge of this Court.⁵

Any objection to this report and recommendation must be specific and must be served and filed with the Clerk of the Court within fourteen (14) days after its service on the objecting party. See Fed. R. Civ. P. 72(b)(2); DRI LR Cv 72(d). Failure to file specific objections in a timely manner constitutes waiver of the right to review by the district judge and the right to appeal the Court's decision. See United States v. Lugo Guerrero, 524 F.3d 5, 14 (1st Cir. 2008); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Patricia A. Sullivan
PATRICIA A. SULLIVAN
United States Magistrate Judge
January 15, 2019

⁵ I recommended essentially the same injunction in Silva v. Thornton, which the Court issued on January 14, 2019. C.A. No. 18-95WES ECF No. 23. The only difference in this case is that Plaintiff need not obtain leave to file a single Fed. R. Civ. P. 60 motion.