

IT FURTHER APPEARING TO THE COURT THAT:

1. When a magistrate judge makes a finding or ruling on a motion or issue, his determination should become that of the court unless objections are filed. See *Thomas v. Arn*, 474 U.S. 150-53 (1985). Moreover, when no objections are filed, the district court is required only to review the record for "clear error" prior to accepting a magistrate judge's recommendation. See *Cruz v. Chater*, 990 F. Supp. 375-78 (M.D. Pa. 1998); *Oldrati v. Apfel*, 33 F. Supp. 2d 397, 399 (E.D. Pa. 1998).

2. Our review of the record reveals no clear error in the Magistrate Judge's conclusion that, upon initial screening, Plaintiff has failed to state a claim against any Defendant. The Magistrate Judge carefully reviewed each of Plaintiff's claims, finding that he has not stated an Eighth Amendment claim against any Defendant based on the incident in question: Plaintiff alleges that he gagged and choked on a "very small piece of wood from a wooden pallet" which he found in mashed potatoes he was eating at dinner on August 21, 2006. (Doc. 9 at 2 (*quoting* Doc. 1 at 3-4).) Plaintiff does not allege any serious medical condition or permanent injury as a result of the incident and seeks damages for emotional distress and mental anguish. (Doc. 9 at 2, 4.)

3. We also find no clear error in the Magistrate Judge's decision to review Plaintiff's case on the merits rather than recommend the voluntary dismissal as requested by Plaintiff in his

correspondence of December 21, 2006, (Doc. 7). (Doc. 9 at 2.)

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

1. The Magistrate Judge's Report and Recommendation (Doc. 9) is ADOPTED;
2. Plaintiff's 42 U.S.C. § 1983 action (Doc. 1) is DISMISSED;
3. Plaintiff's Application to Proceed In Forma Pauperis (Doc. 2) is GRANTED for this filing only;
4. Any appeal from this Order will be deemed frivolous;
5. The Clerk of Court is directed to close this case.

S/Richard P. Conaboy
RICHARD P. CONABOY
United States District Judge