

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ARTHUR KYRICOS)
)
 Plaintiff)
)
 v.) No. 1:15-cv-00224-JAW
)
 MARY'S GONE CRACKERS)
)
 Defendant)

ORDER DISMISSING COMPLAINT

On June 11, 2015, Arthur Kyricos filed a complaint in this Court, claiming that he had broken a tooth while eating one of Mary's Gone Crackers' (MGC) crackers. *Compl.* (ECF No. 1). On July 13, 2015, MGC moved to dismiss the Complaint due to lack of subject matter jurisdiction. *Mot. to Dismiss Compl.* (ECF No. 8). On July 29, 2015, Mr. Kyricos moved to amend his Complaint. *Pl.'s Mot. for Leave to File Am. Compl.* (ECF No. 11). On September 29, 2015, the Magistrate Judge issued a recommended decision, granting the motion to amend the complaint but recommending that the Amended Complaint be dismissed without prejudice. *Recommended Decision on Def.'s Mot. to Dismiss and Order on Pl.'s Mot. to Am.* (ECF No. 17).

On October 15, 2015, Mr. Kyricos filed a motion to withdraw his federal claim and to obtain an order remanding the case to state court. *Pl.'s Mot. to Withdraw Claim from Federal Ct. and Remove it to State Ct.* (ECF No. 20). On October 16, 2015, MGC objected to the state court remand on the ground that the district court is

empowered to remand a case to state court only if the case was initiated in state court and removed to federal court. *Def.'s Opp'n to Pl.'s Mot. to Remove to State Ct.* (ECF No. 21). On October 28, 2015, Mr. Kyricos moved to withdraw the Complaint and represented that he intended to "seek judicial remedy at the State Court." *Pl.'s Mot. to Withdraw Compl.* (ECF No. 22).

The simplest course of action is to grant Mr. Kyricos' request to dismiss his pending federal court complaint without prejudice to allow him to proceed, if he chooses to do so, in state court and to affirm the Recommended Decision because Mr. Kyricos' motion to dismiss requests the same relief the Magistrate Judge recommended in his recommended decision. The remaining motion to withdraw and remand is dismissed as moot.

The Court GRANTS Plaintiff's Motion to Withdraw Complaint (ECF No. 22) and DISMISSES his Complaint (ECF No. 1) without prejudice. The Court also AFFIRMS the Recommended Decision (ECF No. 17) and GRANTS the Mary's Gone Crackers' Motion to Dismiss without prejudice (ECF No. 8). The Court DISMISSES as moot the Plaintiff's Motion to Withdraw Claim from Federal Court and Remove it to State Court (ECF No. 20).

SO ORDERED.

/s/ John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
UNITED STATES DISTRICT JUDGE

Dated this 25th day of November, 2015