

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

SUNSCREEN MIST HOLDINGS, LLC, a  
Michigan limited liability company

Plaintiff,

v.

Case No: 2:17-cv-132-FtM-38MRM

SNAPPYSCREEN, INC.,

Defendant.

\_\_\_\_\_ /

**OPINION AND ORDER**<sup>1</sup>

This matter comes before the Court on review of United States Magistrate Judge Mac R. McCoy's Report and Recommendation ([Doc. 23](#)), recommending that Plaintiff's Second Motion for Alternate Service ([Doc. 21](#)) be denied and this action be dismissed without prejudice for Plaintiff's failure to timely serve Defendant pursuant to Fed. R. Civ. P. 4(m). Judge McCoy also recommends that Defendant's request for attorney's fees be denied. No objections have been filed and the time to do so has expired.

A district judge "may accept, reject, or modify in whole or in part, the findings or recommendations made by the magistrate judge." [28 U.S.C. § 636\(b\)\(1\)](#). The district judge "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.* And "[t]he judge

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may also receive further evidenced or recommit the matter to the magistrate judge with instructions.” *Id.*

After conducting an independent examination of the file and upon due consideration of the Report and Recommendation, the Court accepts the Report and Recommendation. This action will be dismissed without prejudice for failure to timely serve Defendant; and Defendant’s request for attorney’s fees is denied.

Accordingly, it is now

**ORDERED:**

(1) The Report and Recommendation ([Doc. 23](#)) is **ACCEPTED and ADOPTED** and its findings incorporated herein.

(2) Plaintiff’s Second Motion for Alternate Service ([Doc. 21](#)) is **DENIED**.

(3) Defendant’s request for attorney’s fees is **DENIED**.

(4) This action is **dismissed without prejudice** pursuant to Fed. R. Civ. P. 4(m) for failure to timely serve Defendant.

(5) The Clerk is directed to enter judgment accordingly, terminate any pending deadlines, and **close the file**.

**DONE** and **ORDERED** in Fort Myers, Florida this 29th day of November, 2017.

  
SHERI POLSTER CHAPPELL  
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record