

---

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

---

BRUCE M. EWERT,

Plaintiff,

v.

NETPULSE, et al.,

Defendants.

**MEMORANDUM DECISION & ORDER**

Case No. 2:17-cv-995-CW

District Judge Clark Waddoups

---

Plaintiff Bruce M. Ewert, proceeding *in forma pauperis* and pro se, brings this civil rights action against Netpulse, Johnson Health Tech North America, Life Fitness, and Active Theory for patent infringement and breach of contract. (Complaint, ECF No. 3.) This action was assigned to United States District Court Judge Clark Waddoups, who then referred it to United States Magistrate Judge Brooke C. Wells under 28 U.S.C. § 636(b)(1)(B). (ECF No. 5.) The matter is now before the court on a Report and Recommendation from Magistrate Judge Wells, dated June 22, 2018, in which she recommends that the action be dismissed because Mr. Ewert does not have standing and because venue is improper. (ECF No. 23.) The Report and Recommendation is incorporated by reference. *See* 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b).

Sixty-six days have passed since Magistrate Judge Wells entered her recommendation, and it remains unopposed. *See* Fed. R. Civ. P. 72(b)(2) (permitting a party, within fourteen days of being served, to file written objections). Therefore, the court “may review [her] report under any standard it deems appropriate.” *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991).

Because Mr. Ewert is proceeding pro se, the court must liberally construe his pleadings, *Haines v. Kerner*, 404 U.S. 519, 520–21 (1972), but it cannot advocate for him, *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

After careful review of the record, applying a de novo standard of review, the court AFFIRMS and ADOPTS Magistrate Judge Well’s recommendation that Mr. Ewert’s complaint be dismissed. First, Mr. Ewert does not own the patent he claims Defendants are infringing and he was not a party to the contract he seeks to enforce. Second, no Defendant either resides in or has a physical place in this district. Because Mr. Ewert does not have standing to bring this action and because venue is improper, this action is DISMISSED without prejudice.

DATED this 27th day of August, 2018.

BY THE COURT:



---

Clark Waddoups  
United States District Judge