

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

JASON DUFFY WALLACE

PLAINTIFF

vs.

Civil No. 1:10-cv-01009

GOOGLE, C.S. ENTERPRISES,
and FARMERS BANK

DEFENDANTS

REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

Plaintiff, Jason Duffy Wallace, filed this *pro se* action. Plaintiff seeks to proceed *in forma pauperis*. The complaint was provisionally filed prior to a determination regarding service of process. Pursuant to the provisions of 28 U.S.C. § 636(b)(1) and (3)(2005), and General Order 22 of this Court, the Honorable Harry F. Barnes, United States District Judge, referred this case to the undersigned for the purpose of making a report and recommendation regarding service of process.

1. Background

Plaintiff's complaint was provisionally filed on January 28, 2010. (Doc. No.1). On January 28, 2010, the Court ordered Plaintiff to prepare an amended complaint to assist the Court in the determination of whether the complaint should be served upon the Defendants. (Doc. No. 3). This Order sought information from Plaintiff showing the basis of federal court jurisdiction and the full name and address of each Defendant along with their registered agent for service of process. *See Id.* Plaintiff responded to this order and filed his amended complaint on February 12, 2010. (Doc. No. 4).

2. Discussion

Plaintiff alleges a breach of a contract which was breached by Defendant C.S. Enterprises.

However, according to Plaintiff's complaint, the actual agreement was between Defendant C.S. Enterprise and Plaintiff's sister, who is not named in the complaint, nor a party to this suit. (Doc. No. 1). As to Defendant Google, Plaintiff alleges Google interfered with Plaintiff's business by sabotaging his web page which is defined as commission theft. Plaintiff fails to make any factual assertions regarding this claim. (Doc. No. 1). Finally, Plaintiff asserts no claims against Defendant Farmer's Bank in either the complaint or amended complaint. (Doc. Nos. 1, 4).

As for damages, Plaintiff states he is now "penniless" and suffers from back and neck pain, gout, pink eye, and left-knee surgery. (Doc. No. 1). In Plaintiff's amended complaint, Plaintiff alleges damages in lost commission based on the fact that "Movie extra's are always in demand." (Doc. No. 4). He does not state that any of these damages were caused by the actions or inactions of any of the Defendants.

Based on a review of Plaintiff's complaint (Doc. No. 1) and Plaintiff's amended complaint (Doc. No. 4), the Court recommends no service be ordered in this *in forma pauperis* matter, and that Plaintiff's complaint be dismissed for a failure to state a claim upon which relief may be granted. *See* Fed. R. Civ. P. 12(b)(6). Plaintiff has failed to allege any claim of a federal nature or any claim based on diversity of citizenship upon which he could be granted relief.

Additionally, Plaintiff has failed to describe a proper means by which any Defendant may be served. Plaintiff was directed to set forth facts in the amended complaint regarding service of his complaint on the Defendants including the full name and address of each Defendant and their registered agent. (Doc. No. 3). For Defendant Google, Plaintiff did not list an agent of service but only stated Larry Paige was a co-founder of Google. (Doc. No. 4). For Defendant CS Enterprises, Plaintiff only stated the contact information is Chuck Small Mablevale, Arkansas, 72103. (Doc. No. 4). Finally, for Defendant Farmers Bank, Plaintiff stated Phil Barnes was the Chairman of the Board. (Doc. No. 4).

Plaintiff has failed to comply with the prior order of this Court to provide information by which his suit may be properly served.

Despite being offered the opportunity to do so, Plaintiff has wholly failed to state a claim upon which relief can be granted, and he has failed to specifically identify where and how the Defendants are to be served with process. The Court finds the claims raised in this matter are frivolous and should be dismissed with prejudice.

3. Conclusion

I therefore recommend that no service be ordered in this case and the case be dismissed as the Plaintiff fails to state a claim on which relief may be granted. I further recommend the Plaintiff's action be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2)(B)(i)-(iii)(an *in forma pauperis* action, or any portion thereof, may be dismissed on such grounds at any time).

Plaintiff has fourteen days from receipt of the report and recommendation in which to file written objections pursuant to 28 U.S.C. § 636(b)(1). The failure to file timely objections may result in waiver of the right to appeal questions of fact. Plaintiff is reminded that objections must be both timely and specific to trigger de novo review by the district court.

DATED this 31st day of March, 2010.

/s/ Barry A. Bryant
HON. BARRY A. BRYANT
U. S. MAGISTRATE JUDGE