

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

STEVEN BATTERSBY)	
WENDY BATTERSBY,)	
)	
Plaintiffs)	
)	
v.)	Civil No. 2:10-cv-00354-GZS
)	
JOHN J. PORTER,)	
)	
Defendant)	

**RECOMMENDED DECISION
AND
NOTICE OF OMISSION (RULE 11(a))**

On August 20, 2010 Wendy Battersby¹ filed an unsigned complaint with this court (Doc. No. 1) naming herself and Steven Battersby as the plaintiffs. The complaint contains a state court caption and does not contain a recitation regarding this court's jurisdiction, although it appears that jurisdiction is based on diversity of citizenship and the amount in controversy appears to be in excess of \$75,000.00. I gave both Wendy and Steven Battersby until September 29, 2010, to file an application to proceed in forma pauperis or pay the filing fee. Wendy Battersby complied with my order on September 9, 2010, but Steven Battersby has not complied and has not contacted the court. Accordingly, I recommend that Steven Battersby be terminated as a party plaintiff in this action and the case proceed solely on behalf of Wendy Battersby.

As indicated above, the complaint submitted by Wendy Battersby is a one page unsigned document and appears to have been intended for the state court based upon its caption. This recommended decision also serves as a warning under Rule 11 (a), Federal Rules of Civil

¹ I conclude that Wendy Battersby filed the complaint because it is accompanied by a cover letter signed by her alone. (Doc. No. 1-1).

Procedure, that Wendy Battersby's complaint is subject to being stricken in its entirety unless she promptly corrects this deficiency and submits a signed pleading to the court. The court does not intend to send this matter to the United States Marshal for service pursuant to Federal Rule of Civil Procedure 4 (c)(3) until a properly signed and captioned complaint has been filed with the court.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Dated October 4, 2010

/s/ Margaret J. Kravchuk
U.S. Magistrate Judge