

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

**JEFFRY BUTLER, et al.**

\*

**v.**

\* **Civil No. DKC 10-2747**

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**DIRECTSAT USA, LLC, et al.**

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**REPORT AND RECOMMENDATION**

This report addresses Defendants' Motion for Sanctions, which was referred to me for resolution pursuant to Section 636(b)(1)(A) of Title 28 of the United States Code. Defendants argue that eight plaintiffs should be dismissed with prejudice for failing to participate in the litigation. ECF Nos. 112, 115. Plaintiffs' counsel concedes that despite his best efforts, these eight opt-in Plaintiffs have not responded to multiple letters, phone calls and emails, and thus have provided no discovery responses.<sup>1</sup> ECF No. 114. Plaintiffs' counsel requests that the dismissal be without prejudice because their failure to respond could be justified by a reason such as illness.

It is recommended that the Court dismiss these Plaintiffs with prejudice. Dismissal with prejudice is appropriate under Federal Rule of Civil Procedure 41(b) when a plaintiff fails to prosecute or comply with a court order and when there has been a "clear record of delay or contumacious conduct by the plaintiff." *Diamond v. Bon Secours Hosp.*, CIV. WMN-09-865, 2010 WL 2696632 at \*6 (D. Md. July 6, 2010) (citation and quotation marks omitted). These eight Plaintiffs have failed to respond to the January 8, 2013 discovery order, ECF No. 111, for

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<sup>1</sup> The relevant Plaintiffs are Leroy Deon Smith, Sean M. Roeser, William Arthur Young, Jr., Kristian Matteo Jefferson, Kent Fitzgerald Williams, Robert Woodrow Cross, Wayne Alexander Diorio and Edwin Lopez.

almost three months. No explanation has been provided to justify their inactivity, and no expectation of future compliance is offered. The Court previously dismissed Plaintiff Charles Dorsey with prejudice for a similar failure: “[h]is disappearance remains unexplained and he has essentially abandoned this litigation.” ECF No. 94.<sup>2</sup> For this same reason, Plaintiffs Leroy Deon Smith, Sean M. Roeser, William Arthur Young, Jr., Kristian Matteo Jefferson, Kent Fitzgerald Williams, Robert Woodrow Cross, Wayne Alexander Diorio and Edwin Lopez should also be dismissed with prejudice.

Date: May 16, 2013

/S/  
JILLYN K. SCHULZE  
United States Magistrate Judge

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<sup>2</sup> The Court noted also that, because the opt-in period had expired, it was not clear what the practical difference was between dismissing Mr. Dorsey with prejudice or without prejudice.