

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

LONNER MELTON,

Plaintiff,

CIVIL ACTION NO. 07-CV-15480-DT

vs.

DISTRICT JUDGE DAVID M. LAWSON

**MICHIGAN CORRECTIONS
COMM'N, MICHIGAN DEP'T
OF CORRECTIONS, PATRICIA
CARUSO, DOUGLAS VASBINDER,
JACOBSON, LOWE, CONNOR,
HUMPHREY,**

MAGISTRATE JUDGE MONA K. MAJZOUN

Defendants.

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REPORT AND RECOMMENDATION

I. RECOMMENDATION: Plaintiff's Motion for Default Judgment (docket no. 29) should be **DENIED**.

II. REPORT:

A. Factual Background

Plaintiff, a Michigan state prisoner proceeding *pro se*, filed a Motion for Default Judgment on September 29, 2008 as to Defendants Michigan Corrections Commission, Douglas Vasbinder, and Lowe. (Docket no. 29). No response has been filed.¹ The Court dispenses with oral argument pursuant to E.D. Mich. LR 7.1(e). This matter is now ready for ruling.

¹ Although the response time has not yet run, a response from these Defendants is most unlikely given that they have not yet been served with process for this action and no attorney has entered an appearance for them. Therefore, the Court will proceed to consider Plaintiff's motion.

B. Standard

The plaintiff bears the burden of showing that the defendant against whom the plaintiff is seeking default has been effectively served with process. Fed. R. Civ. P. 55(a); *Maryland State Firemen's Ass'n v. Chaves*, 166 F.R.D. 353, 354 (D. Md. 1996); 10A Charles Alan Wright, Arthur R. Miller, and Mary Kay Kane, Federal Practice and Procedure § 2682, p. 14 (3d ed. 1998).

C. Analysis

Plaintiff has failed to carry his burden of showing that the named Defendants have been properly served. The record shows that the Waiver of Service form was returned unexecuted for Defendants Vasbinder and Lowe. (Docket nos. 14, 15). No return of service is shown for Defendant Michigan Corrections Commission. Because Plaintiff has failed to show that he has properly served any of the Defendants named in this motion, his Motion for Default Judgment should be denied.

III. NOTICE TO PARTIES REGARDING OBJECTIONS:

The parties to this action may object to and seek review of this Report and Recommendation, but are required to act within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of Health & Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). Filing of objections which raise some issues but fail to raise others with specificity, will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Sec'y of Health & Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n Of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

Any objections must be labeled as “Objection #1,” “Objection #2,” etc. Any objection must recite *precisely* the provision of this Report and Recommendation to which it pertains. Not later than ten days after service of an objection, the opposing party must file a concise response proportionate to the objections in length and complexity. The response must specifically address each issue raised in the objections, in the same order and labeled as “Response to Objection #1,” “Response to Objection #2,” etc.

Dated: October 17, 2008

s/ Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Report and Recommendation was served upon Loner Melton and Counsel of Record on this date.

Dated: October 17, 2008

s/ Lisa C. Bartlett
Courtroom Deputy