

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHNNY DENHAM,

No. 09-12740

Plaintiff,

District Judge Stephen J. Murphy, III

v.

Magistrate Judge R. Steven Whalen

ALBERT LORD, ET AL.,

Defendants.

**REPORT AND RECOMMENDATION TO DISMISS
DEFENDANT PAUL D. BORJA**

Pursuant to 28 U.S.C. § 636(b)(1)(B) and Fed.R.Civ.P. 4(m), I recommend that Defendant Paul D. Borja be DISMISSED WITHOUT PREJUDICE.

I. FACTS

On July 10, 2009, Plaintiff Johnny Denham filed a civil complaint naming three Defendants, including Paul D. Borja. Except for Borja, all Defendants have filed either answers or motions to dismiss. According to the docket sheet, Defendant Borja has not been served with a summons and complaint.

Therefore, on November 10, 2009, this Court ordered Plaintiff to “show cause in writing by December 1, 2009 why the undersigned should not issue a Report and Recommendation that the Complaint be dismissed without prejudice as to Defendant Paul D. Borja, for failure to serve the summons and complaint within the time prescribed by Fed.R.Civ.P. 4(m).” *See* Docket #13. To date, Plaintiff has filed nothing in response to the show cause order.

II. DISCUSSION

Under Fed.R.Civ.P. 4(m), service of a summons must be made within 120 days of the filing of the complaint. Rule 4(m) also provide:

“If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion *or on its own initiative after notice to the plaintiff*, shall dismiss the action without prejudice as to that defendant....” (Emphasis added).

Notice having been given to the Plaintiff, this action should be dismissed without prejudice as to Defendant Paul D. Borja.

III. CONCLUSION

I therefore recommend that this actions be DISMISSED WITHOUT PREJUDICE as to Defendant Paul D. Borja.

Any objections to this Report and Recommendation must be filed within fourteen (14) days of service of a copy hereof, including weekends and intervening holidays, 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, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985); *Howard v. Secretary of HHS*, 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. Sullivan*, 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.

Within fourteen (14) days of service of any objecting party’s timely filed objections, including weekends and intervening holidays, the opposing party may file a response. The response shall be not more than twenty (20) pages in length unless by

motion and order such page limit is extended by the court. The response shall address specifically, and in the same order raised, each issue contained within the objections.

s/R. Steven Whalen
R. STEVEN WHALEN
UNITED STATES MAGISTRATE JUDGE

Dated: December 21, 2009

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served on the attorneys and/or parties of record by electronic means or U.S. Mail on December 21, 2009.

s/Susan Jefferson
Case Manager