

defendants, the diligence of the plaintiff, and the reasons given for the request to dismiss. See id. at *2, citing Grover by Grover v. Eli Lilly and Co., 33 F.3d 716, 718 (6th Cir. 1994). The presence or absence of "plain legal prejudice" to the defendants is a key factor, and when that cannot be demonstrated, this Court has been inclined to permit dismissal of case like this one, even in a situation where defendants have presented potentially dispositive motions, which, of course, has not occurred here. See also Neu v. Adams County Jail, 2012 WL 3878717 (S.D. Ohio Sept. 6, 2012), adopted and affirmed 2012 WL 5378303 (S.D. Ohio Oct. 31, 2012). Given that defendants have neither filed a dispositive motion (apart from the one noting failure of service on some defendants) nor asserted any plain legal prejudice which might result from the granting of Plaintiff's motion, it is recommended that Plaintiff's motion to dismiss (Doc. 23) be granted, that this case be dismissed without prejudice, and that the motion to dismiss based on insufficiency of service of process (Doc. 19) be denied as moot.

Procedure on Objections

If any party objects to this Report and Recommendation, that party may, within fourteen (14) days of the date of this Report, file and serve on all parties written objections to those specific proposed findings or recommendations to which objection is made, together with supporting authority for the objection(s). A judge of this Court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. Upon proper objections, a judge of this Court may accept, reject, or modify, in whole or in part, the findings or recommendations made herein, may receive further evidence or may recommit this matter to the magistrate judge with instructions. 28 U.S.C. §636(b)(1).

The parties are specifically advised that failure to

object to the Report and Recommendation will result in a waiver of the right to have the district judge review the Report and Recommendation de novo, and also operates as a waiver of the right to appeal the decision of the District Court adopting the Report and Recommendation. See Thomas v. Arn, 474 U.S. 140 (1985); United States v. Walters, 638 F.2d 947 (6th Cir. 1981).

/s/ Terence P. Kemp
United States Magistrate Judge