

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**HOUSTON BYRD, JR.,**

Plaintiff,

v.

**JP MORGAN CHASE,**

Defendant.

**Case No. 2:18-cv-506**

**Judge Graham**

**Magistrate Judge Vascura**

**ORDER**

This matter is before the Court for consideration of Plaintiff's objections (ECF Nos. 14 and 16) to the Report and Recommendation issued by Magistrate Judge Vascura on August 30, 2018. (ECF No. 12). Magistrate Judge Vascura recommended that this action be **DISMISSED WITHOUT PREJUDICE** pursuant to Rule 4(m) for failure to timely effect service.

For the reasons set forth below, the Court **OVERRULES** Plaintiff's objections (ECF Nos. 14 and 16) and **ADOPTS** the Report and Recommendation issued by Magistrate Judge Vascura on August 30, 2018. (ECF No. 12).

**I. Standard of Review**

Plaintiff timely filed his objections on September 4 and September 5, 2018. If a party objects within the allotted time to a report and recommendation, the Court "shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C); *see also* Fed. R. Civ. P. 72(b). Upon review, the Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). As required by 28

U.S.C. § 636(b)(1)(C), the Court will make a *de novo* review of those portions of the Report and Recommendation to which Plaintiff specifically objects.

## **II. Plaintiffs' Objections**

Plaintiff, proceeding pro se, objected to the Report and Recommendation arguing that by mailing the summons and complaint to the Defendant via certified mail and confirming their delivery, this constituted evidence of valid service of process pursuant to a source he cites. Thus, according to Plaintiff, he has effected service on the Defendant.

## **III. Discussion**

Plaintiff's objections are noted, but as noted by Magistrate Judge Vascura, such service by the Plaintiff does not comport with either Federal Rule of Civil Procedure 4 or the Southern District of Ohio rules, and it is these rules that bind this Court. As outlined by Magistrate Judge Vascura, "the summons Plaintiff attempted to serve on Defendant is neither signed by the Clerk nor bears the Court's seal as required by Rule 4(a)(1)." (ECF No. 12 at 1–2). Furthermore, "although Ohio law contemplates service of process through certified or express mail, such mailing must be completed through the Clerk." (*Id.* at 2 citing Ohio Civ. R. 4.1; S.D. Ohio Civ. R. 4.2). Therefore, by not taking the steps set forth by either Federal Rule of Civil Procedure 4 or the Southern District of Ohio rules, Plaintiff has not completed effective service, and it is appropriate that this action be **DISMISSED WITHOUT PREJUDICE** pursuant to Fed. R. Civ. P. 4(m) for failure to timely effect service.

## **IV. Conclusion**

Upon *de novo* review, the Court **OVERRULES** Plaintiff's objections (ECF Nos. 14 and 16) and **ADOPTS** the Report and Recommendation (ECF No. 12). Therefore, this case is **DISMISSED WITHOUT PREJUDICE** pursuant to Fed. R. Civ. P. 4(m) for failure to timely

effect service. Accordingly, Plaintiff's Motion for Objection, Request for Findings to Court's Order dated July 26, 2018, and Recusal (ECF No. 9), Motion for Objection, Request for Findings to Court's Order dated July 5, 2018, August 24, 2018, Show Cause Order and Recusal (ECF No. 11), Motion for Entry of Default into the Court Record and Default Judgment by the Clerk (ECF No. 15), and Motion for Findings (ECF No. 18) are hereby **DENIED** as moot.

IT IS SO ORDERED.

/s/ James L. Graham  
JAMES L. GRAHAM  
United States District Judge

DATE: December 13, 2018