

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ANTONIO PEARSON, :
Plaintiff :
v. :Case No. 3:12-cv-110-KRG-KAP
BUREAU OF CORRECTIONS INDUSTRY, :
et al., :
Defendants :

MEMORANDUM ORDER

This matter is before Magistrate Judge Keith A. Pesto for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Local Rule 72 for Magistrate Judges.

The Magistrate Judge filed a Report and Recommendation on September 9, 2012, docket no. 9, recommending that plaintiff's motion for *in forma pauperis* status be denied, and advising plaintiff to respond to defendant Viewsonic Corporation and defendant Sung Yi's motion to dismiss at docket no. 6.

The parties were notified that, pursuant to 28 U.S.C. § 636(b)(1), they had fourteen days to file written objections to the Report and Recommendation. The notice to plaintiff was returned as "refused by inmate." docket no. 15. Also, plaintiff filed two motions for extension of time to serve the defendants, docket no. 11, docket no. 13, based on the assumption that his *in forma pauperis* motion would be granted.

After de novo review of the record, the Report and Recommendation, and noting the lack of objections thereto, the following order is entered:

AND NOW, this 1st day of October, 2012, it is

ORDERED that plaintiff's motion for leave to proceed in *forma pauperis*, docket no. 4, is denied. The motion to dismiss of defendants Viewsonic Corporation and Sung Yi, docket no. 6, is granted. This court lacks subject matter jurisdiction over the breach of warranty claim that plausibly could be stated against these defendants. Plaintiff cannot create diversity jurisdiction by asking for damages clearly not recoverable, nor create federal question jurisdiction by conclusory allegations that the Viewsonic defendants participated in a conspiracy to violate his civil rights. The plaintiff is not given leave to amend his complaint.

Plaintiff's motions for extension of time to serve defendants, docket no. 11, docket no. 13, are denied. If plaintiff has not filed proper returns of service by October 31, 2012, the matter is ordered dismissed for lack of prosecution as to any unserved defendant. The matter remains with the Magistrate Judge for pretrial proceedings.

BY THE COURT:



KIM R. GIBSON,
UNITED STATES DISTRICT JUDGE

Notice to counsel of record by ECF and by U.S. Mail to:

Antonio Pearson BL-0521
S.C.I. Coal Township
1 Kelley Drive
Coal Township, PA 17866-1021