

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

In Re:	)	
	)	
ARELIA and ZOMETA PRODUCTS	)	No. 3:06-MDL-01760
LIABILITY LITIGATION	)	Judge Campbell/Brown
(MDL No. 1760)	)	
	)	
This Document Relates to:	)	
Case No. 3:09-cv-00203	)	

To: The Honorable Todd J. Campbell

**Report and Recommendation**

This matter comes before the Magistrate Judge on Defendant's Motion to Dismiss pursuant to F.R.C.P. 4(M). (DE 2835). Defendant asserts that it has not been served with this Plaintiff's complaint. The Plaintiff responds that the summons has been sent to a process server for expedited service (DE 2860) and a notification of service (DE 2892). As such, the Magistrate Judge **recommends** that Defendant's Motion to Dismiss be **denied**.

However, the Magistrate Judge is dissatisfied with a portion of the Plaintiff's response. The Plaintiff insinuates that the failure to timely serve the complaint was, at least in part, somehow the Defendant's fault. To be clear, the Defendant is not required to inform the Plaintiffs, or send any sort of warning letter to the Plaintiffs, that it has not been properly served. This is very obviously the responsibility of Plaintiffs' counsel and Plaintiffs' counsel alone. Plaintiffs' counsel should enact some sort of procedure to ensure that service in each and every case is timely before this becomes a serious issue in this MDL. The Defendant is not difficult to serve and has been served literally hundreds of times in this MDL. If this continues to be a problem, the Magistrate Judge will take a firmer stance on this issue in the future, including

recommending that cases be dismissed. While the Magistrate Judge understands that there are hundreds of Plaintiffs to keep track of in this matter, Plaintiff's counsel must be more careful in the future to follow the applicable rules of civil procedure and to ensure that all complaints are served within the allotted time frame.

For the reasons stated above, the Magistrate Judge recommends that Defendant's Motion to Dismiss be **DENIED** (Docket Entry 2835). Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has ten (10) days from receipt of this Report and Recommendation in which to file any written objection to it with the District Court. Any party opposing said objections shall have ten (10) days from receipt of any objections filed in which to file any responses to said objections. Failure to file specific objections within ten (10) days of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. *Thomas v. Arn*, 474 U.S. 140 (1985); *Cowherd v. Million*, 380 F.3d 909, 912 (6<sup>th</sup> Cir. 2004 (en banc)).

/s/ Joe B. Brown  
JOE B. BROWN  
UNITED STATES MAGISTRATE JUDGE