

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

KEVIN WARD, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	NO. 3:09-0352
	)	Judge Nixon/Bryant
JAMES C. LESTORTI, et al.,	)	
	)	
Defendants.	)	

**TO: The Honorable Senior Judge John T. Nixon**

**REPORT AND RECOMMENDATION**

It appears from the record that although the complaint in this case was filed over two years ago on April 15, 2009, plaintiffs have failed to obtain service of process upon any defendant. It further appears from the record that plaintiffs apparently have made numerous attempts to obtain service on defendant Lestorti without success. The Court previously has granted extensions of time pursuant to Rule 4(m), Federal Rules of Civil Procedure, within which to obtain service of process.

Rule 4(m) provides that if a defendant is not served within 120 days after the complaint is filed, the Court - on motion or on its own after notice to the plaintiff - must dismiss the action without prejudice or order that service be made within a specified time.

From the record the undersigned Magistrate Judge finds that defendants have failed to obtain service of process on any defendant within the time provided by law despite an extension of time granted by the Court. For this reason, the undersigned

Magistrate Judge **RECOMMENDS** that the complaint be **DISMISSED** without prejudice.

**RECOMMENDATION**

For the reasons stated above, the undersigned Magistrate Judge **RECOMMENDS** that the complaint be **DISMISSED** pursuant to Rule 4(m) for failure to obtain service of process on any defendant.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has fourteen (14) days from service of this Report and Recommendation in which to file any written objections to this Recommendation, with the District Court. Any party opposing said objections shall have fourteen (14) days from receipt of any objections filed in this Report in which to file any responses to said objections. Failure to file specific objections within fourteen (14) 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), reh'g denied, 474 U.S. 1111 (1986).

**ENTERED** this 7th day of July 2011.

s/ John S. Bryant  
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JOHN S. BRYANT  
United States Magistrate Judge