

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

NATHANIEL JOHNSON,)	
)	
Plaintiff,)	
)	
v.)	No. 2:16-cv-02763-JPM-cgc
)	
CONCORD CAREER COLLEGE;)	
TOMMY STEWART, <i>President of</i>)	
<i>Campus</i> ; JAMI FRAZIER, <i>Vice President</i>)	
<i>of Student Affairs</i> ; MICHAEL)	
CLEVELAND, <i>Director of Clinical</i>)	
<i>Education</i> ; LORI SPENCER, <i>Academic</i>)	
<i>Dean</i> ; and WINSTON GRANVILLE,)	
<i>Program Director</i> ,)	
)	
Defendants.)	
)	

**ORDER ADOPTING MAGISTRATE’S REPORT AND RECOMMENDATION,
ORDER DENYING PLAINTIFF’S MOTION TO AMEND THE COMPLAINT,
ORDER GRANTING DEFENDANTS’ MOTION TO DISMISS,
AND
ORDER TO SHOW CAUSE**

Before the Court is the Report and Recommendation of United States Magistrate Judge Charmaine G. Claxton. (ECF No. 43.) In the Report and Recommendation, Judge Claxton recommends that Defendants Concorde Career Colleges, Inc. (“Concorde College”), Tommy Stewart, Jami Frazier, and Michael Cleveland’s (collectively “Moving Defendants”) Motion to Dismiss (ECF No. 21) be granted and Plaintiff Nathaniel Johnson’s *pro se* Request

for Leave to Amend Civil Complaint (“Motion to Amend”) (ECF No. 28) be denied. (ECF No. 43, PageID 373.)

Pursuant to Federal Rule of Civil Procedure 72(b)(2), “[w]ithin 14 days after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations.” Fed. R. Civ. P. 72(b)(2). In the instant case, Plaintiff Nathaniel Johnson requested “(21) days” in which to file his objections. (ECF No. 44.) The Court granted Johnson’s extension of time (ECF No. 45), but no objections to the Report and Recommendation were filed within the twenty-one (21) days after the report and recommendation were served. See Fed. R. Civ. P. 5(b)(2), 6(d), 72(b)(2). The Court has allowed additional time for Johnson’s objection to be mailed and processed, but no timely objections appear to have been filed.

“When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Fed. R. Civ. P. 72(b) advisory committee notes. On clear-error review of the Magistrate Judge’s Report and Recommendation, the Court hereby ADOPTS the Report and Recommendation (ECF No. 43) in its entirety. Johnson’s motion to amend the complaint (ECF No. 28) is hereby DENIED and the Moving Defendants’ motion to dismiss (ECF No. 21) is hereby GRANTED.

The Moving Defendants’ motion to dismiss having been granted, two defendants remain: Lori Spencer and Winton Granville. The record reflects that neither Spencer nor Granville has been served with process in this matter. (See ECF Nos. 34, 35 (summons as to

Granville and Spencer returned unexecuted).) Federal Rule of Civil Procedure 4(m)¹

provides:

If a defendant is not served within 90 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 against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

The instant complaint was filed on September 23, 2016. (ECF No. 1.) More than 90 days have elapsed since, but the record reflects that defendants Spencer and Granville have not been served. Plaintiff Nathaniel Johnson is hereby ORDERED to, within fourteen (14) days of the entry of this order, show “good cause for the failure” to serve Spencer and Granville, as required by Rule (4)m. Failure to do so will result in the Court dismissing the claims against Spencer and Granville without prejudice.

SO ORDERED, this 2nd day of March, 2018.

/s/ Jon P. McCalla

JON P. McCALLA

UNITED STATES DISTRICT JUDGE

¹ Rule 4(m) does not apply to service in a foreign country under Rules 4(f), 4(b)(2), or 4(j)(1), or to service of a notice under Rule 71.1(d)(3)(A) (“Condemning Real or Personal Property”). In the instant case, none of these exceptions appears to apply.