

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

HARRIL GLEN SCOTT	§	
Vs.	§	CIVIL ACTION NO. 6:11CV276
PFIZER PHARMACEUTICAL	§	

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Plaintiff, proceeding *pro se* and *in forma pauperis*, filed the above-styled lawsuit on May 31, 2011. The case was referred to the undersigned for all pretrial proceedings in accordance with 28 U.S.C. § 636.

On July 18, 2011, Plaintiff filed a Motion Requesting Default Judgement (document [#8](#)). Plaintiff complains that Defendant Pfizer Pharmaceutical has not filed an answer in this case. To date, however, Defendant has not been served. Plaintiff cannot succeed on a motion for default judgment without proof of the date and method of service.

In this case, a Report and Recommendation was entered on August 5, 2011 recommending that the complaint be dismissed for want of subject matter jurisdiction. Plaintiff subsequently sought to amend the complaint and remove the non-diverse defendant. The non-diverse defendant, Dr. Duane Tisdale, was dismissed on January 3, 2012 and Plaintiff's Amended Complaint was filed the same date. Now that the Amended Complaint has been filed, the case is ready for service.

RECOMMENDATION

In light of the foregoing, it is recommended that Plaintiff's Motion Requesting Default Judgement (document [#8](#)) be denied.

A party's failure to file written objections to the findings, conclusions and recommendations contained in this Report within fourteen days after service shall bar that party from *de novo* review by the district judge of those findings, conclusions and recommendations and, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Auto. Assn.*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

So **ORDERED** and **SIGNED** this **4** day of **January, 2012**.



JUDITH K. GUTHRIE
UNITED STATES MAGISTRATE JUDGE