

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

MICHAEL E. WILLIAMS

Plaintiff,

V.

**ENVIRONMENTAL PROTETCTION
AGENCY ET AL**

Defendant.

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CIVIL ACTION NO. 6:15-CV-862

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

The above entitled and numbered civil action was referred to United States Magistrate Judge John D. Love pursuant to 28 U.S.C. § 636. The Magistrate Judge issued a Report and Recommendation concluding that Defendants who have not been served or who have been improperly served be dismissed without prejudice (Doc. No. 72).

The Report and Recommendation of the Magistrate Judge, which contains his findings, conclusions, and recommendation for the dismissal of sixteen Defendants, has been presented for consideration. Plaintiff filed objections to the Report and Recommendation (Doc. No. 75). For the reasons discussed below, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct. Therefore, the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court.

Plaintiff’s objections are almost entirely unrelated to the Magistrate Judge’s Report and Recommendation. Over the span of thirty-four pages, his only reference to the Report is the following: “Defendants were informed of case by certified mail. As representatives of Defendants requested. No service issues exist. See dates of all Defendants answer. Estoppel.”

From these statements, the Court can glean only one objection. It appears that Plaintiff believes he served all Defendants properly. As discussed in the Magistrate Judge's Report, Rule 4 states that (1) any person who is at least 18 years old and not a party may serve a summons and complaint and (2) a plaintiff is responsible for having the summons and complaint served within 120 days after the complaint is filed unless the plaintiff can show good cause for the failure to serve within 120 days. Here, Plaintiff himself served the EPA and Gina McCarthy, which directly violates the Federal Rules because a party to the lawsuit may not serve the summons and complaint.

The Court has not received proof that the following Defendants have been properly served: Matthew McCarthy, Jack Arias, Sarah Scheldt, Kevin Black, TXI-Cement, General Counsel Hood, Sedgwick Corp., Cindy Weakly, Koholberg (of Kohlberg, Kravis, Roberts Co.), Kravis (of Kohlberg, Kravis, Roberts Co.), Roberts (of Kohlberg, Kravis, Roberts Co.), David Decker, Kathleen Crunch, and James Hoyle. When the Court inquired about service of these Defendants at the January 25, 2016 status conference, Plaintiff failed to show the Court good cause for his failure of service. Instead, Plaintiff told the Court that those Defendants had been properly served, which is an assertion with no basis in the record.

It is accordingly **ORDERED** that Defendants who have not been served or who have been improperly served in this civil action are **DISMISSED WITHOUT PREJUDICE**.

SIGNED this 3rd day of March, 2016.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE