

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

ABDULLAH SALL,)
)
 Plaintiff,)
)
 v.)
)
 SARAH FAIR GEORGE, et al.,)
)
 Defendants.)

Case No. 2:20-cv-00214

**OPINION AND ORDER ADOPTING MAGISTRATE JUDGE’S REPORT AND
RECOMMENDATION DENYING SARAH GEORGE’S AND CHITTENDEN
COUNTY STATE’S ATTORNEY’S OFFICE’S MOTION TO DISMISS THE
AMENDED COMPLAINT FOR INSUFFICIENT SERVICE OF PROCESS**
(Docs. 41 & 157)

This matter came before the court for a review of the Magistrate Judge’s February 4, 2022 Report and Recommendation (“R & R”) (Doc. 157), in which he recommended the court deny a motion to dismiss Plaintiff’s Amended Complaint for insufficient service of process filed by Defendant Sarah George, in her official capacity as Chittenden County State’s Attorney, and Defendant Chittenden County State’s Attorney’s Office (collectively, “Defendants”). (Doc. 41.) The Magistrate Judge further recommended quashing Plaintiff’s service of process on Defendants and granting Plaintiff thirty days to effectuate proper service.

A district judge must make a *de novo* determination of those portions of a magistrate judge’s report and recommendation to which an objection is made. Fed. R. Civ. P. 72(b)(3); 28 U.S.C. § 636(b)(1); *Cullen v. United States*, 194 F.3d 401, 405 (2d Cir. 1999). The district judge may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1); *accord Cullen*, 194 F.3d at 405. A district judge, however, is not required to review the factual or legal conclusions of the magistrate judge as to those portions of a report and

recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985).

In his twenty-one-page R & R, the Magistrate Judge carefully reviewed the factual record and correctly concluded Plaintiff's service of process on Defendants failed to comply with Fed. R. Civ. P. 4. If a defendant is not properly served, the court "must dismiss the action without prejudice against that defendant or order that service be made within a specified time." Fed. R. Civ. P. 4(m). If Plaintiff can show "good cause for the failure, the court must extend the time for service for an appropriate period." *Id.* The court has broad "discretion to grant extensions of the service period even where there is no good cause shown[.]" *Zapata v. City of New York*, 502 F.3d 192, 196 (2d Cir. 2007).

Despite failing to show good cause, the Magistrate Judge recommended that Plaintiff be granted additional time to effect service because (1) Defendants had actual notice of Plaintiff's claims; (2) Defendants will suffer no prejudice from an extension of time to effectuate service; (3) Plaintiff is self-represented; and (4) Plaintiff's claims are not obviously futile. *See St. John Rennalls v. Cnty. of Westchester*, 159 F.R.D. 418, 420 (S.D.N.Y. 1994) ("When dealing with *pro se* parties, courts interpret the rules dealing with service of process liberally. Where a party contesting service of process has received actual notice, service requirements under Fed. R. Civ. P. 4 are construed liberally.") (citations omitted). No party has raised an objection to the R & R, which is well-reasoned. The court therefore adopts the R & R in its entirety, with the exception that the court enlarges the time in which service must be made and warns that Plaintiff's failure to effectuate proper and timely service of process will result in dismissal of his claims.

CONCLUSION

For the foregoing reasons, the court hereby ADOPTS the Magistrate Judge's R & R (Doc. 157) as the court's Opinion and Order and DENIES Defendants' motion to dismiss Plaintiff's Amended Complaint for insufficient service of process (Doc. 41). The court hereby ORDERS Plaintiff to properly serve Defendants within sixty (60) days of the date of this Opinion and Order. **FAILURE TO EFFECTUATE PROPER**

**SERVICE OF PROCESS BY THIS DEADLINE SHALL RESULT IN THE
DISMISSAL OF PLAINTIFF'S CLAIMS.**

SO ORDERED.

Dated at Burlington, in the District of Vermont, this 7th day of March, 2022.

/s/ Christina Reiss

Christina Reiss, District Judge
United States District Court