

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

BRISTOUT BOURGUIGNON

v.

C.A. NO. 08-226 S

WARDEN WAYNE T. SALISBURY, et al.

REPORT AND RECOMMENDATION

Jacob Hagopian, Senior United States Magistrate Judge

Plaintiff, Bristout Bourguignon, *pro se*, a former detainee at the Donald W. Wyatt Detention Facility in Central Falls, Rhode Island, filed an amended complaint (the “Amended Complaint”) alleging a violation of his constitutional rights by defendants (Docket # 12).

Presently before the Court is a motion to dismiss the Amended Complaint against him without prejudice for insufficient process and insufficient service of process pursuant to Rules 12(b)(4) & 12(b)(5) of the Federal Rules of Civil Procedure (the “Federal Rules”) filed by defendant Christian Manns [erroneously identified as “Manngs” in the Amended Complaint] (Docket # 42). This matter has been referred to me for preliminary review, findings, and recommended disposition pursuant to 28 U.S.C. § 636(b)(1)(B).

In support of his motion, Manns states that he is an Immigration Enforcement Agent for the United States Immigration and Customs Enforcement Office and thus Federal Rule 4(i) requires plaintiff to serve both the United States and him with a summons and copy of the Amended Complaint. He contends that plaintiff failed to serve the United States because he did not serve the United States Attorney for the District of Rhode Island and the Attorney General for the United States in accordance with 4(i)(1). He also urges that plaintiff neither sent him a copy of the summons and amended complaint by registered mail, as required by Federal Rule 4(i)(2) for a suit against him in his official capacity, nor served him in accordance with Federal Rule 4(e), as required by Federal Rule 4(i)(3) for a suit against him in his individual capacity. Specifically, he notes that the summons was left at his place of work with a person whom he did not authorize as his legal agent to receive service of process on his behalf, in violation of Federal Rule 4(e), and a copy of the Amended Complaint was not attached to the summons, in violation of Federal Rule 4(c)(1).

In response to defendant Manns's motion, plaintiff does not dispute any of Manns's contentions; in fact, plaintiff volunteers to withdraw Manns as a defendant without prejudice (Docket # 43).

Accordingly, I recommend that defendant Manns's Motion to Dismiss without prejudice be GRANTED and the claims against him be DISMISSED without prejudice.

Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of Court within ten days of its receipt. Fed R. Civ. P. 72(b); LR Cv 72(d). Failure to file timely, specific objections to this report constitutes waiver of both the right to review by the district court and the right to appeal the district court's decision. *United States v. Valencia-Copete*, 792 F.2d 4, 6 (1st Cir. 1986) (per curiam); *Park Motor Mart, Inc. v. Ford Motor Co.*, 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Jacob Hagopian
Jacob Hagopian
Senior United States Magistrate Judge
Date: August 10, 2009