APPENDIX

Opinion, Affirmed, U.S. Court of Appeals for the Fifth Circuit, August 23, 2018

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 18-10389
Summary Calendar
(Filed August 23, 2018)

WILLIAM HENRY STARRETT, JR.,

Plaintiff-Appellant

v.

LOCKHEED MARTIN CORPORATION; TEXAS MILITARY DEPARTMENT; UNITED STATES ARMY CIVIL AFFAIRS AND PSYCHOLOGICAL OPERATIONS COMMAND;

UNITED STATES ARMY RESERVE COMMAND; UNITED STATES ARMY; UNITED STATES ARMY SPECIAL OPERATIONS COMMAND; UNITED STATES DEPARTMENT OF DEFENSE; DEFENSE ADVANCED RESEARCH PROJECTS AGENCY; LAWRENCE LIVERMORE NATIONAL SECURITY, L.L.C.; SANDIA CORPORATION; NATIONAL NUCLEAR SECURITY ADMINISTRATION; UNITED STATES DEPARTMENT OF ENERGY; UNITED STATES SPECIAL OPERATIONS COMMAND,

Defendants-Appellees

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:17-CV-988

Before DENNIS, CLEMENT, and OWEN, Circuit Judges,

PER CURIAM:*

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 18-10389

William Starrett, Jr., proceeding pro se, filed suit against various federal government and military agencies, the Texas Military Department, and large private corporations for violations of numerous federal laws. Starrett's

149-page complaint alleged that defendants conspired to use him for mind experiments, targeted him with "Remote Neural Monitoring," harassed him using "Voice to Skull" technology, and otherwise remotely monitored and controlled his thoughts, movements, sleep, and bodily functions.

The district court dismissed Starrett's complaint against defendants Lawrence Livermore National Security, LLC, and Sandia Corporation under FED. R. CIV. P. 12(b)(5) for insufficient service of process. It then dismissed Starrett's claims against Lockheed Martin corporation, the Texas Military Department, and various federal government agencies under Rule 12(b)(1), finding that the claims were "patently frivolous," and under Rule 12(b)(6), finding that they were "fanciful, fantastic, or delusional." Additionally, the court found that plaintiff's claims against Lockheed Martin and Texas Military Department should be dismissed under Rule 12(b)(5) because service was insufficient.

We review de novo a district court's grant of a motion to dismiss. The Supreme Court has held that when allegations within a complaint are "so attenuated and unsubstantial as to be absolutely devoid of merit, wholly insubstantial, obviously frivolous, plainly unsubstantial, or no longer open to discussion," a federal court lacks subject matter jurisdiction to adjudicate the claim. *Hagans v. Lavine*, 415 U.S. 528, 536-37 (1974) (internal citations omitted). We agree with the district court's characterizations of plaintiff's claims and determinations that service on some of the defendants was improperly made. We

affirm for essentially the reasons stated by that court.

AFFIRMED.

Judgment, Affirmed, U.S. Court of Appeals for the Fifth Circuit, August 23, 2018

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 18-10389
Summary Calendar
(Filed August 23, 2018)

WILLIAM HENRY STARRETT, JR.,

Plaintiff-Appellant

v.

LOCKHEED MARTIN CORPORATION; TEXAS MILITARY DEPARTMENT; UNITED STATES ARMY CIVIL AFFAIRS AND PSYCHOLOGICAL OPERATIONS COMMAND; UNITED STATES ARMY RESERVE

COMMAND; UNITED STATES ARMY; UNITED STATES ARMY SPECIAL OPERATIONS COMMAND; UNITED STATES DEPARTMENT OF DEFENSE; DEFENSE ADVANCED RESEARCH PROJECTS AGENCY; LAWRENCE LIVERMORE NATIONAL SECURITY, L.L.C.; SANDIA CORPORATION; NATIONAL NUCLEAR SECURITY ADMINISTRATION; UNITED STATES DEPARTMENT OF ENERGY; UNITED STATES SPECIAL OPERATIONS COMMAND,

Defendants-Appellees

Appeal from the United States District Court
for the Northern District of Texas

Before DENNIS, CLEMENT, and OWEN, Circuit Judges,

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the judgment of the District Court is affirmed.

IT IS FURTHER ORDERED that plaintiff-appellant pay to defendants-appellees the costs on appeal to be taxed by the Clerk of this Court.

Order – Adopting Magistrate Rutherford's Recommendation, U.S. District Court, March 19, 2018

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

No. 3:17-CV-0988-D

WILLIAM HENRY STARRETT, JR.,

Plaintiff,

v.

LOCKHEED MARTIN CORPORATION, et al.,

Defendants.

ORDER

(Filed 03/19/18)

After making an independent review of the pleadings, files, and records in this case, the March 9, 2018 findings, conclusions, and recommendation of the magistrate judge, and plaintiff's March 13, 2018 objections, the court concludes that the findings and conclusions are correct. It is therefore ordered that the findings,

conclusions, and recommendation of the magistrate judge are adopted.

Accordingly, the following motions are granted: the June 2, 2017 motion to dismiss of defendant Lockheed Martin Corporation; the June 12, 2017 motion to dismiss of defendants United States Army, United States Army Special Operations Command, United States Army Civil Affairs & Psychological Operations Command, United States Army Reserve Command, United States Special Operations Command, United States Department of Defense, Defense Advanced Research Project Agency, United States Department of Energy, and National Nuclear Security Administration; and the August 23, 2018 motion to dismiss of defendant Texas Military Department.

Plaintiff's actions against these defendants are dismissed without prejudice by final judgment filed today.

SO ORDERED.

March 19, 2018.

[Illegible]

SIDNEY A. FITZWATER
UNITED STATES DISTRICT JUDGE

Magistrate Rutherford's Recommendation – Dismissal as to Defendants Lockheed Martin, TXMIL, and Federal Defendants, U.S. District Court, March 9, 2018

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Case No. 3:17-CV-00988-D-BT

WILLIAM HENRY STARRETT, JR.,

Plaintiff,

v.

LOCKEED (sic) MARTIN CORPORATION, et al.,

Defendants.

FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

(Filed 03/09/18)

Before the Court in this *pro se* civil rights action are three motions to dismiss filed by: (1) Defendant Lockheed Martin Corporation ("Lockheed") (ECF No. 17); (2) Defendants United States Army, United States Army Special Operations Command, United States Army Civil Affairs & Psychological Operations Command, United States Army Reserve Command, United

States Special Operations Command, United States Department of Defense, Defense Advanced Research Project Agency, United States Department of Energy, and National Nuclear Security Administration (collectively, the "Federal Defendants") (ECF No. 20); and (3) Texas Military Department ("TXMIL") (ECF No. 56). For the reasons stated, the Court recommends that the District Court GRANT Defendants' Motions and DISMISS Plaintiff's claims without prejudice.

Background

On April 7, 2017, Plaintiff William Henry Starrett, Jr., proceeding pro se, filed this lawsuit asserting claims against the United States government and several large corporations for violations of the United States Constitution and numerous federal civil and criminal laws; violations of the Texas Constitution, Texas Penal Code, and Texas Business and Commerce Code; copyright infringement; fraud, conspiracy to commit fraud, false imprisonment, and invasion of privacy; and tortious interference, gross negligence, and strict liability. Pl.'s Compl. 1, 50, 55, 56, 63, 74, 76–79, 85–88, 107, 111–145 (ECF No. 2). By his Complaint, which is 149 pages long, Plaintiff asserts 73 distinct causes of action based on allegations that Defendants conspired to forcefully use him as a test subject for military exercises and mind experiments. Pl's Compl. 2, 8–12, 18–23 (ECF No. 2). Plaintiff alleges that Defendants targeted him with a "Remote Neural Monitoring" system that uses "electro-optical energy like lasers to measure brain activity and sensory nerve impulses," harassed him using

"Voice to Skull" technology to broadcast sounds, images, and voices directly to his brain, and otherwise remotely monitored and controlled his thoughts, movements, sleep, and bodily functions. Pl's Compl. 8 ¶ 27–30 (ECF No. 2).

The following allegations are representative of Plaintiff's Complaint:

- This civil action arises out of intentional inflictions of emotional distress, invasions of privacy, forced involvement, thefts, appropriations, and conversions ongoing twenty-four hours per day, seven days per week, and continuing to date. Pl.'s Compl. 2, ¶ 2;
- Plaintiff's life was threated by voices not imagined, but sensed more than heard, while his body felt constantly probed, and a constant stream of echoing electronic, synthesized sounds bombarded him. *Id.* at 8, ¶ 26;
- The United States Army Psychological Operations personnel initiated confrontations, causing Plaintiff to endure invisible but inwardly perceptible voice harassment technologies, delivery of subliminal hypnotic suggestion without consent, electronically induced nausea, and pressure-like sensations. *Id.* at 9 ¶ 33;
- Every time Plaintiff departed or returned from his home, United States Army Psychological Operations personnel and Lockheed Martin Staff received text messages on their mobile devices to alert them. *Id.* at 9 ¶ 35;

- Plaintiff was being taunted about group messages detailing activities and habits, including private conversation details and explicit bodily function. *Id.* at 10, ¶ 36;
- Plaintiff was kept by Defendants as an experiment test subject, and he is continually forced to assist and supply the Defendants with development of trainings, batteries, scripts, procedures, knowledge bases, and expert systems. *Id.* at 10, ¶ 37;
- Defendants subject Plaintiff to aggressor-controlled cycles of sleep, brutal surprise experiments, electronically imposed hallucinations, stimulation of deeply negative emotions, and activating wildly atypical bodily experiences. *Id.* at 11, ¶ 40;
- Plaintiff was told by his remote harassers that Defendant US Army had been performing military surveillance of Plaintiff's goings for months as he was a target for Defendant US Department of Defense's sanctioned "Jade Helm 15" exercises. *Id.* at 15, ¶ 60;
- United States Army Psychological Operations personnel remotely monitored and utilized voice harassment systems against the peace of Plaintiff's home, heart, and mind, ignoring his needs, protests, surrender, and denial of consent. *Id.* at 18 ¶ 74.

Based on this alleged conduct, Plaintiff asserts claims for violations of his constitutional rights, as well as claims under federal and state criminal statutes, claims for various intentional torts, negligence, theft of trade secrets, and

products liability. Plaintiff seeks a minimum award of $90 billion. *Id.* at 148.

Defendants have filed separate motions to dismiss pursuant to Fed. R. Civ. P. 12(b)(1), 12(b)(5), and (12)(b)(6). All the Defendants take issue with the fantastic and delusional nature of Plaintiff's factual allegations. Defendants contend that Plaintiff's allegations are so wholly without merit, and Plaintiff's claims should be dismissed for lack of subject matter jurisdiction, or for failure to state a viable claim for relief. Lockheed and TXMIL also argue Plaintiff's claims should be dismissed for insufficient service of process, because Plaintiff attempted to effect service by mailing the Complaint himself. Finally, Defendants contend certain of Plaintiff's claims fail as a matter of law. For example, Lockheed and TXMIL argue that Plaintiff's claims for violations of criminal law fail because there is no private right of action for violations of a criminal statute. Lockheed also argues that, to the extent Plaintiff asserts constitutional claims against it, those claims fail because Lockheed is not a government actor. The Federal Defendants argue that Plaintiff's claims against them fail because there is no subject matter jurisdiction under the Federal Tort Claims Act or Bivens for claims against federal agencies. Plaintiff filed a response to each motion. The issues have now been fully briefed, and the matter is ripe for determination.

Legal Standards and Analysis

Dismissal pursuant to Rules 12(b)(1) and 12(b)(6)

Lockheed, the Federal Defendants, and

TXMIL all move to dismiss Plaintiff's claims on the ground that the allegations in his Complaint are factually frivolous, irrational, and delusional. See Lockheed's Br. 3–4 (ECF No. 17); Fed. Defs.' Br. 1 (ECF No. 21); TXMIL's Br. 7–8 (ECF No. 56). Lockheed and TXMIL contend that Plaintiff's allegations are so bizarre and fantastic as to be absolutely without merit and subject to dismissal under Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction. Lockheed's Br. 3–4 (ECF No. 17); TXMIL's Br 7–8. (ECF No. 56). Lockheed and TXMIL also contend that Plaintiff's allegations lack an arguable basis in fact, and, thus, must be dismissed under Fed. R. Civ. P. 12(b)(6) for failure to state a claim. Lockheed's Br. 6–7 (ECF No. 17); TXMIL's Br. 8–10 (ECF No. 56). The Federal Defendants similarly argue that Plaintiff's claims are facially implausible and must be dismissed under Fed. R. Civ. P. 12(b)(6). Fed. Defs.' Br. 5–6 (ECF No. 21). The Court agrees that Plaintiff's allegations are factually frivolous and that dismissal is warranted.

A federal court may dismiss a complaint for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1) when the allegations within the complaint "are so attenuated and unsubstantial as to be absolutely devoid of merit, . . . wholly insubstantial, . . . obviously frivolous, . . . plainly unsubstantial, . . . or no longer open to discussion." *Hagans v. Lavine*, 415 U.S. 528, 536-37 (1974). Moreover, Fed. R. Civ. P. 12(b)(6) allows a federal court to dismiss a complaint for failure to state a claim upon which relief can be granted. Dismissal of a complaint under Fed. R. Civ. P. 12(b)(6) is appropriate if it fails to plead

"enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The complaint must allege enough facts to move the claim "across the line from conceivable to plausible." *Id.* Determining whether the plausibility standard has been met is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

Rule 12(b)(6) does not allow a court to dismiss a plaintiff's complaint merely because the court does not believe the plaintiff's factual allegations. However, dismissal may nonetheless be appropriate when the facts set forth in the complaint are clearly baseless because they are fanciful, fantastic, or delusional. *See e.g. Mason v. AT & T Servs., Inc.*, 2014 WL 804019, at *2 (N.D. Tex. Feb. 28, 2014) (Fitzwater, J.) (finding fantastic, delusional, and factually frivolous claims that plaintiff's employer was playing audible sounds and noises in an attempt to make her quit, intercepting her telephone and internet activity in retaliation, and spying on her and her family members' houses with cameras and audio equipment and allowing others to watch and listen and dismissing such claims under 28 U.S.C. § 1915(e)); *Patterson v. U.S. Government*, 2008 WL 5061800 (N.D. Tex. Nov. 25, 2008) (same as to allegations that plaintiff received messages through the television to return to her husband, that she was being tracked by a remote control bracelet and that someone at a family crisis center threatened to put her in a dungeon);

Jackson v. Johnson, 2005 WL 1521495 (N.D. Tex. June. 25, 2005) (same as to allegations that FBI conspired with state and local police to invade plaintiff's privacy through "highly sophisticated surveillance techniques, computerized mind control, and satellite weaponry).

In this case, Plaintiff generally alleges a conspiracy between the defendants to remotely control his brain and body causing him distress. The Court has little difficulty concluding that Plaintiff's claims are patently frivolous and should be dismissed for lack of subject matter jurisdiction. Alternatively, the Court concludes that the facts set forth in the Complaint are clearly baseless because they are fanciful, fantastic, or delusional. Plaintiff has therefore failed to state a claim for relief against any of the defendants, and his claims should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

Dismissal pursuant to Rule 12(b)(5)

Lockheed and TXMIL are also entitled to dismissal of Plaintiff's claims against them for insufficient service of process, pursuant to Fed. R. Civ. P. 12(b)(5).[1] The Federal Rules of Civil Procedure require that the plaintiff serve the summons and a copy of the complaint upon the defendants. FED. R. CIV. P. 4(c)(1). A district court may dismiss a case without prejudice under Federal Rule of Civil Procedure 4(m) if the plaintiff fails to effectuate service on defendants within ninety days of filing the complaint.

Here, Plaintiff attempted to serve all Defendants himself through certified mail, on April 13, 2017. See Proof of Service 2-3, ECF No.

6. Although mail service is not directly authorized by the Federal Rules of Civil Procedure, Rule 4(e)(1) authorizes service under the laws of the state in which the district court sits or where service is made. FED. R. CIV. P. 4(e)(1). Accordingly, Plaintiff may execute service of process pursuant to Texas law. The Texas Rules of Civil Procedure authorize service, by a person authorized under Texas Rule 103, via certified or registered mail. TEX. R. CIV. P. 106(a)(2). Texas Rule 103 explicitly requires that process be served by:

(1) any sheriff or constable or other person authorized by law;

(2) any person authorized by law or by written order of the court who is not less than eighteen years of age; or

(3) any person certified under order of the Supreme Court.

TEX. R. CIV. P. 103. The rule further states that service by certified mail must be effected by the clerk of the court, if requested, and under no circumstances can an interested party serve process in the suit. *Id.* Federal district courts in Texas interpreting Texas Rule 103 have found that the clerk of the court or one of the three authorized persons in Rule 103 can serve process by certified mail. *See Willis v. Lopez*, 2010 WL 4877273, at *1-2 (N.D. Tex. 2010); *Isais v. Marmion Indus. Corp.*, 2010 WL 723773, at *3 (S.D. Tex. 2010); Dunlap, 2014 WL 1677680, at *3.

In this case, Plaintiff attempted to serve

process via certified mail under Texas law, as allowed by Fed. R. Civ. P. 4(e)(1). However, Plaintiff did not request that service be effected by the clerk of court or an authorized or certified process server. Instead, Plaintiff admits he himself sent Defendants a copy of the Complaint by certified mail. Pl.'s Resp. 18 ¶ 7 (ECF No. 18). Plaintiff's attempt at service is thus invalid because it did not comply with Texas law. See Isais, 2010 WL 723773, at *3 ("Plaintiff attempted to serve the defendants by certified mail. Such service is only valid if it complies with Texas law.").

"[A] district court has discretion to quash defective service of process and provide a plaintiff another opportunity to effect proper service of process." *Williams v. Air-France-KLM, S.A.*, 2014 WL 3626097, at *5 (N.D. Tex. 2014) (citation omitted); *Stanga v. McCormick Shipping Corp.*, 268 F.2d 544, 554 (5th Cir. 1959) (explaining that dismissal is only appropriate if "there is no reasonably conceivable means of acquiring jurisdiction over the person of a defendant" and should not be granted when the plaintiff has only made one attempt at service of process); *Comstock v. City of Balch Springs*, 2017 WL 2791113, at *2 (N.D. Tex. May 18, 2017), rec. adopted, 2017 WL 2778117 (N.D. Tex. June 26, 2017). Plaintiff has been warned multiple times that he must properly effectuate service upon the Defendants. See Orders, ECF Nos. 42, 59, 97. A number of defendants have already been dismissed due to Plaintiff's failure to properly effectuate service. *Id.* Accordingly, because the District Court has ordered Plaintiff multiples

times to properly serve Defendants, and Plaintiff has failed to do so, service should be quashed and Lockheed and TXMIL should be dismissed from the lawsuit.[2]

RECOMMENDATION

For the reasons discussed above, the Court recommends that the Motions to Dismiss filed by Defendant Lockheed Martin Corporation (ECF No. 17), Defendants United States Army, United States Army Special Operations Command, United States Army Civil Affairs & Psychological Operations Command, United States Army Reserve Command, United States Special Operations Command, United States Department of Defense, Defense Advanced Research Project Agency, United States Department of Energy, and National Nuclear Security Administration (ECF No. 20), and Texas Military Department (ECF No. 56) be GRANTED. The District Court should DISMISS without prejudice Plaintiff's claims against these Defendants.

[1] In a footnote, the Federal Defendants assert that Plaintiff failed to satisfy the Fed. R. Civ. P. 4(i) service requirements, but they did not argue that Plaintiff's claims should be dismissed for insufficient service of process.

[2] The Court's resolution of Defendants' arguments for dismissal based on the frivolous nature of Plaintiff's factual allegations and Plaintiff's failure to properly effect service of process pretermits the need to reach Defendants' additional arguments for dismissal.

SO RECOMMENDED.

Dated: March 9, 2018.

[Illegible]

REBECCA RUTHERFORD
UNITED STATES MAGISTRATE JUDGE

Order – Dismissal as to Defendants SANDIA and LLNL, U.S. District Court, March 2, 2018

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Civil Action No. 3:17-CV-0988-D

WILLIAM HENRY STARRETT, JR.,

Plaintiff,

v.

LOCKHEED MARTIN
CORPORATION, et al.,

Defendants.

ORDER

(Filed 03/02/18)

On September 19, 2017 the court ordered that plaintiff effectuate proper service of process on Lawrence Livermore National Security, LLC ("Lawrence Livermore") and Sandia Corporation ("Sandia") within 28 days of the date the order was filed. Because plaintiff failed to comply with the order, Lawrence Livermore and Sandia are dismissed from this action without prejudice.

SO ORDERED.

March 2, 2018.

[Illegible]

SIDNEY A. FITZWATER
UNITED STATES DISTRICT JUDGE

Order – Adopting Magistrate Stickney's Recommendation, U.S. District Court, September 19, 2017

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

No. 3:17-CV-0988-D

WILLIAM HENRY STARRETT, JR.,

Plaintiff,

v.

LOCKHEED MARTIN CORPORATION, et al.,

Defendants.

ORDER

(Filed 09/19/17)

The court has considered the magistrate judge's findings, conclusions, and recommendation filed August 16, 2017 and plaintiff's objections filed August 17, 2017. After making an independent review of the pleadings, files, and records in this case, and the findings, conclusions, and recommendation of the magistrate judge, the court concludes that the recommendation of the magistrate judge is correct and is adopted. As this court has said before in this case, see, e.g., Aug. 1, 2017 order at 1, service must be performed by a person who is not a party in the case.

Accordingly, it is ordered that defendants Lawrence Livermore National Security, LLC's ("Lawrence Livermore's") alternative motion to quash [ECF No. 9] and Sandia Corporation's (Sandia's") alternative motion to quash [ECF No. 10] are granted, and plaintiff's service of process on Lawrence Livermore and Sandia is quashed.

Plaintiff must effectuate proper service of process on Lawrence Livermore and Sandia within 28 days of the date this order is filed.

The court denies without prejudice the motions to dismiss of Lawrence Livermore [ECF No. 9] and Sandia [ECF No. 10].

SO ORDERED.

September 19, 2017.

[Illegible]

SIDNEY A. FITZWATER
UNITED STATES DISTRICT JUDGE

Order – Dismissal as to Defendant Microsoft Corporation, U.S. District Court, September 5, 2017

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Civil Action No. 3:17-CV-0988-D

WILLIAM HENRY STARRETT, JR.,

Plaintiff,

v.

LOCKHEED MARTIN CORPORATION, et al.,

Defendants.

ORDER

(Filed 09/05/17)

On July 17, 2017 the court ordered that plaintiff demonstrate good cause, pursuant to Fed. R. Civ. P. 4(m) and 6(b), for failing to effect service on defendant Microsoft Corporation ("Microsoft"). On August 1, 2017 the court again ordered plaintiff to effect service on Microsoft, and the court clarified that the requirement that service be performed by a person who is not a party to the case applies to service through the mail. Because plaintiff ahs (sic) failed to comply with these orders, this action is dismissed without prejudice as to Microsoft by judgment filed today.

SO ORDERED.

September 5, 2017.

[Illegible]

SIDNEY A. FITZWATER
UNITED STATES DISTRICT JUDGE

Magistrate Stickney's Recommendation – Quash service as to Defendants SANDIA LLNL, U.S. District Court, August 16, 2017

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

No. 3:17-CV-00988-D

WILLIAM HENRY STARRETT, JR.,

Plaintiff,

v.

LOCKHEED MARTIN CORPORATION, et al.,

Defendants.

FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

(Filed 08/16/17)

Pursuant to 28 U.S.C. § 636(b), the district court has referred Defendants Lawrence Livermore National Security, LLC'S Motion to

Dismiss or Alternative Motion to Quash [ECF No. 9] and Sandia Corporation's Motion to Dismiss or Alternative Motion to Quash [ECF No. 10] to the United States Magistrate Judge Paul D. Stickney for determination or recommendation. See Order of Reference 1, ECF No. 12. For the following reasons, the district court should GRANT Defendants' Alternative Motions to Quash pursuant to Federal Rule of Civil Procedure 12(b)(5).

Background

William Starrett ("Plaintiff"), appearing pro se, filed this suit on April 7, 2017, against fourteen defendants including Lawrence Livermore National Security, LLC ("LLNS") and Sandia Corporation ("Sandia") alleging seventy three different claims and/or violations. See Compl. 50-145 M 276-731, ECF No. 2; see also Def.'s Mot. 2, ECF No. 9 (citing allegations in Plaintiff's Complaint against LLNS); Def.'s Mot. 2, ECF No. 10 (citing same against Sandia). Due to the length and unclear allegations contained in Plaintiff's 149 page Complaint, the Court only addresses Plaintiff 5 claims against Defendants LLNS and Sandia. In short, Plaintiff alleges that LLNS and Sandia "provided technology to other entities and government agencies . . . and then those entities and government agencies used that technology against him." Def.'s Mot. 6, ECF No. 9; Def's Mot. 9, ECF No. 10. Defendants move pursuant to Federal Rules of Civil Procedure ("Rule" or "Rules") 12(b)(4), 12(b)(5), and 12(b)(6) for the Court to dismiss Plaintiff' s Complaint or alternatively quash Plaintiff's attempted service of process. Def.'s Mot. 2, ECF No. 9; Def.'s Mot. 2,

ECF No. 10. Upon consideration ofthe parties' briefs and the relevant law, the Court finds that these motions are ripe for determination.

Legal Standard

A motion filed pursuant to Rule 12(b)(5) seeks dismissal of the action based on insufficient service of process. *Quinn v. Miller*, 470 Fed. App'x 321, 323 (5th Cir. 2012). Once such a motion has been filed, the party serving process has the burden of establishing its validity. *Id.* (citing *Carimi v. Royal Carribean Cruise Line,* Inc., 959 F.2d 1344, 1346 (5th Cir. 1992)). If the serving party fails to meet his burden, the district court can exercise its discretion and quash the service and dismiss without prejudice all claims against the improperly-served defendant. *See Gartin v. Par Pharm. Cos., Inc.*, 289 Fed. App'x 688, 691-92 (5th Cir. 2008).

Analysis

In accordance with Rule 12(b)(5), insufficient service of process is a grounds for dismissal. FED. R. CIV. P. 12(b)(5). Rule 4(c)(1) requires that the plaintiff serve the summons and a copy of the complaint upon the defendant(s). FED. R. CIV. P. 4(c)(1). "For a federal court to have personal jurisdiction over a defendant, the defendant must have been served with process in accordance with Rule 4." *Dunlap v. City of Fort Worth*, No. 4:13-CV-802-O, 2014 WL 1677680, at *2 (ND. Tex. 2014) (quoting *Pavlov v. Parsons*, 574 F. Supp. 393, 399 (SD. Tex. 1983)). Defendants are both corporations within a judicial district of the United States, thus service of process is governed by Rule 4(h). FED. R. CIV.

P. 4(h). Rule 4(h) provides that the plaintiff may effectuate service of process upon a corporation by: (1) following the methods provided by the law of the state in which the district court is located or the state in which service is made, or (2) delivering a copy of the summons and complaint to an officer, managing or general agent, or any agent authorized by appointment or by law to receive service of process. *Id.*

Here, Plaintiff attempted to serve Defendants LLNS and Sandia through certified mail. See Proof of Service 2-3, ECF No. 6. Although mail service is not directly authorized by the Federal Rules of Civil Procedure, Rule 4(e)(l) authorizes service under the laws of the state in which the district court sits or where service is made. FED. R. CIV. P. 4(e)(1). Accordingly, Plaintiff may execute service of process pursuant to Texas law. The Texas Rules of Civil Procedure authorize service, by a person authorized under Texas Rule 103, via certified or registered mail. TEX. R. CIV. P. 106(a)(2). Texas Rule 103 explicitly requires that process be served by "(1) any sheriff or constable or other person authorized by law, (2) any person authorized by law or by written order of the court who is not less than eighteen years of age, or (3) any person certified under order of the Supreme Court." TEX. R. CIV. P. 103. The rule further states that service by certified mail must be effected by the clerk of the court, if requested, and under no circumstances can an interested party serve process in the suit. *Id.*; see also Order 1, ECF No. 42. Upon amendment of the relevant rules, federal district courts in Texas interpreting Texas Rule 103 have found that the clerk of the

court or one of the three authorized persons in Rule 103 can serve process by certified mail. *See Willis v. Lopez*, No. 3:10-CV-154-M, 2010 WL 4877273, at *1-2 (N.D. Tex. 2010); *Isais v. Marmion Indus. Corp*, No. H-09-3 197, 2010 WL 723773, at *3 (SD. Tex. 2010); Dunlap, 2014 WL 1677680, at *3.

The clerk of the court did not serve process through certified mail in this action. In fact, Plaintiff admits he merely sent the Complaint by certified mail himself. Pl.'s Resp. 3 1] 4, ECF No. 13; Pl.'s Resp. 2 fl 4, ECF No. 14. Furthermore, when certified mail has been selected as the method of service, Texas law requires that the return receipt be signed by the addressee. TEX. R. CIV. P. 107(c); *Keeton v. Carrasco*, 53 S.W.3d 13, 19 (Tex. App—San Antonio 2001, pet. denied).

Since Plaintiff attempted to serve process via certified mail under Texas law, as allowed by Federal Rule 4(e)(l), he was bound to comply with all of the requirements of Texas law. See Isais, 2010 WL 723773, at *3 ("Plaintiff attempted to serve the defendants by certified mail. Such service is only valid if it complies with Texas law."). As outlined above, he did not. Plaintiff did not comply with Texas Rule 103 because he failed to utilize the clerk of the court or an authorized or certified process server. Plaintiff has failed to meet his burden of establishing the validity of service of process. Plaintiff must serve the parties as provided by Federal Rule of Civil Procedure 4(h) or Texas law. "[A] district court has discretion to quash defective service of process and provide a plaintiff another opportunity to effect proper service of process." *Williams v. Air-*

France-KLM, S.A., No. 3:14-CV-1244-B, 2014 WL 3626097, at *5 (ND. Tex. 2014) (citation omitted); *Stanga v. McCormick Shipping Corp.*, 268 F.2d 544, 554 (5th Cir. 1959) (explaining that dismissal is only appropriate if "there is no reasonably conceivable means of acquiring jurisdiction over the person of a defendant" and should not be granted when the plaintiff has only made one attempt at service of process); *Comstock v. City of Balch Springs*, No. 3:17-CV-344-B, 2017 WL 2791113, at *2 (ND. Tex. May 18, 2017), *R. & R. adopted*, No. 3:17-CV-344-B, 2017 WL 2778117 (N.D. Tex. June 26, 2017). Accordingly, the Court recommends that the district court should quash Plaintiffs attempted service of process and allow Plaintiff to properly serve both Defendants within thirty days of the entry of the court's acceptance of this recommendation. The Court, therefore, also recommends that the district court deny Defendants' Motions to Dismiss pursuant to Rule 12(b)(6) without prejudice and allow Defendants to re-file their motions once Plaintiff has effectuated proper service.

RECOMMENDATION

For the foregoing reasons, this Court recommends that the district court should GRANT Defendant Lawrence Livermore National Security, LLC's Alternative Motion to Quash [ECF No. 9] and Defendant Sandia Corporation's Alternative Motion to Quash [ECF No. 10]. The Court recommends that the district court QUASH Plaintiff's service of process upon Lawrence Livermore National Security, LLC and Sandia Corporation and order Plaintiff to

effectuate proper service of process within thirty days of the court's acceptance of these findings. The Court recommends that the district court DENY Defendants' Motions to Dismiss pursuant to Rule 12(b)(6) without prejudice and allow Defendants to re-file them once Plaintiff has effectuated proper service of process.

SO RECOMMENDED, this 16 day of August, 2017.

[Illegible]_____

PAUL D. STICKNEY

UNITED STATES MAGISTRATE JUDGE

Order – Surrogate required for service by mail, U.S. District Court, August 1, 2017

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Civil Action No. 3:17-CV-0988-D

WILLIAM HENRY STARRETT, JR.,

Plaintiff,

v.

LOCKHEED MARTIN CORPORATION, et al.,

Defendants.

ORDER

(Filed 08/01/17)

On July 17, 2017 the court entered an order directing that plaintiff demonstrate good cause for failing to effect service on defendants Texas Military Department and Microsoft Corporation. In his response, plaintiff appears to state that he personally effected service on these defendants by certified mail. This is improper.

Fed. R. Civ. P. 4(c)(2) provides that "[a]ny person who is at least 18 years old and not a party may serve a summons and complaint." The Rule thus requires that service be performed by a person who is not a party to the case. This requirement applies to service through the mail. *See, e.g., Shabazz v. City of Houston*, 515 Fed Appx 263, 264 (5th Cir. 2013) (per curiam); *McGowan v. Johnson*, 2016 WL 4468097, at *4 (N.D. Tex. Aug. 1, 2016) (Ramirez, J.) ("[W]hile Rule 4(i) may govern how service may be effected in a suit against the United States, it does not change Rule 4(c)(2)'s requirements governing *who* may effect service." (citation omitted)), rec.

adopted, 2016 WL 4446629 (N.D. Tex. Aug. 24, 2016) (Lynn, C.J.). Texas state law likewise requires that service be performed by a person who is not a party in the case.

Plaintiff must therefore deliver the summons and complaint to someone else—a person who is at least 18 years old and not a party to this lawsuit—who can then effect service by mail on the defendant in question and make proof of service. Once service on a defendant is made, plaintiff can then make proof of service in accordance with local civil rule LR 4.1.

The court extends the deadline for plaintiff to comply with the court's July 17, 2017 order to August 22, 2017.

SO ORDERED.

August 1, 2017.

[Illegible]

SIDNEY A. FITZWATER
UNITED STATES DISTRICT JUDGE

Order Denying Petition for Rehearing En Banc, U.S. Court of Appeals for the Fifth Circuit, September 20, 2018

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 18-10389
(Filed September 20, 2018)

WILLIAM HENRY STARRETT, JR.,

Plaintiff-Appellant

v.

LOCKHEED MARTIN CORPORATION; TEXAS MILITARY DEPARTMENT; UNITED STATES ARMY CIVIL AFFAIRS AND PSYCHOLOGICAL OPERATIONS COMMAND; UNITED STATES ARMY RESERVE COMMAND; UNITED STATES ARMY; UNITED STATES ARMY SPECIAL OPERATIONS COMMAND; UNITED STATES DEPARTMENT OF DEFENSE; DEFENSE ADVANCED RESEARCH PROJECTS AGENCY; LAWRENCE LIVERMORE NATIONAL SECURITY, L.L.C.; SANDIA CORPORATION; NATIONAL NUCLEAR SECURITY ADMINISTRATION; UNITED STATES DEPARTMENT OF ENERGY; UNITED STATES SPECIAL OPERATIONS COMMAND,

Defendants-Appellees

Appeal from the United States District Court
for the Northern District of Texas

ON PETITION FOR REHEARING EN BANC

(Opinion August 23, 2018, 5 Cir., ___, F.3d ___)

Before DENNIS, CLEMENT, and OWEN, Circuit Judges.

PER CURIAM

(✓) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED. R. APP. P. and SW CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

( ) Treating the Petition for Rehearing. En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. The court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor (FED. R. APP. P. and 5m CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT

[Illegible (/s/ James L. Dennis)]
UNITED STATES CIRCUIT JUDGE

No. _____

PETITION FOR WRIT OF CERTIORARI

November 2018