

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

<b>MICHAEL L. CHASSE,</b>	)	
	)	
<b>PLAINTIFF</b>	)	
	)	
<b>v.</b>	)	<b>Civil No. 99-119-B</b>
	)	
<b>DAVID CLEWLEY, ET AL.,</b>	)	
	)	
<b>DEFENDANTS</b>	)	

**ORDER**

This is a lawsuit brought by a prisoner, Michael L. Chasse, charging that he has been denied adequate medical care and medications. He filed his complaint on May 3, 1999, alleging that he was taken into custody at the Penobscot County Jail from the Eastern Maine Medical Center in Bangor, Maine, where he had been under treatment for two gunshot wounds. He claims that Brewer police officers, Penobscot County Jail officers and employees of Allied Resources for Correctional Health (“Allied”), the private entity in charge of providing medical care at the Jail, failed to obtain his hospital discharge records and failed to provide him appropriate care and medications. He seeks damages and, although he is now incarcerated at the Maine Correctional Institution in Thomaston, Maine, injunctive relief. Motions to dismiss were filed by the defendant Alfred Cichon on November 19, 1999, and by the defendants David Clewley, Steven Barker and Danny Green on December 2, 1999, and by the defendant Douglas Jennings on December 22, 1999. The plaintiff filed no responses to the motions to dismiss and the Magistrate Judge issued recommended decisions on January 12, 2000, recommending that the motions to dismiss be granted. The plaintiff did file

a motion for leave to amend his complaint on January 5, 2000. However, he did not provide the proposed amended complaint or give any indication in his motion as to what changes he would make to the original complaint. The Magistrate Judge denied the motion to amend complaint on January 12, 2000. The plaintiff has challenged the Magistrate Judge's rulings and I review the rulings *de novo*.

The plaintiff is proceeding without a lawyer and I, therefore, read his filings with liberality. Even at this late date, however, after all the motions and Magistrate Judge rulings and after all the opposition papers the plaintiff has filed on these subjects, he still has failed entirely to provide any arguments why the original complaint should withstand the motions to dismiss or what an amended complaint would contain that would make it survive.<sup>1</sup> I am, therefore, left without any basis to conclude that there is any merit to the plaintiff's arguments. The motions to dismiss are **GRANTED** as the Magistrate Judge has recommended, and the plaintiff's appeal of the Magistrate Judge's order denying his motion to amend is **AFFIRMED** for all the reasons stated by the Magistrate Judge and the additional reason that the plaintiff still has failed to provide the court with any substantive arguments.

On February 4, 2000, the Magistrate Judge recommended that the complaint be dismissed against Allied because the plaintiff failed to respond to an order to show cause to demonstrate service of process upon that defendant. The plaintiff filed a "Statement of Facts Under Oath" on February 8, 2000, dated February 2, 2000. The Magistrate Judge treated it as a motion to reconsider and on

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<sup>1</sup> In his "Statement of Facts Under Oath" filed on February 8, 2000, with respect to the Magistrate Judge's Order finding that he had not perfected service on Allied, he does indicate that he wants to make Cheryl Gallant a defendant and to assert that his claims against Douglas Jennings and Allied are in their "official" as well as individual capacities.

February 10, 2000, denied the motion to reconsider. In doing so, the Magistrate Judge reasoned that the plaintiff's assertion that he had perfected service of process on Allied by serving the defendant Douglas Jennings or Cheryl Gallant of the Penobscot County Jail was simply inadequate. The plaintiff previously had been notified several times that Ms. Gallant was not an agent for service of process on Allied and there was no indication in the record that any service made upon the defendant Jennings had been made upon him in a capacity as agent for Allied. Instead the service upon the defendant Jennings was effective only as to the defendant Jennings in his individual capacity. On February 24, 2000, the plaintiff filed a "Motion for a De Novo Review of the Magistrate Judge's Recommended Decision and Incorporated Memorandum of Law," attacking the original Recommended Decision. Although it attacked certain procedural conclusions about the timeliness of his earlier response to the Order to Show Cause,<sup>2</sup> it wholly failed to address the issue whether proper service had yet been accomplished on Allied. Accordingly, I **AFFIRM** the Magistrate Judge's order dismissing Allied Resources for Correctional Health on the ground that service of process has never been perfected as to that defendant.<sup>3</sup>

Although more than 120 days have elapsed since the filing of the complaint, certain unnamed defendants mentioned in the complaint have not been served a summons and a copy of the complaint

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<sup>2</sup> I observe that in calculating his time requirement, the plaintiff believes that he can add three days to his response time under Fed. R. Civ. P. 6(e) even when he is responding to a court order. That is not so. Rule 6(e) *does not apply* to time periods that begin with the filing in court of a judgment or order. The plaintiff is hereby advised accordingly.

<sup>3</sup> On March 3, 2000, the plaintiff filed a new "Motion for Enlargement of Time" asking leave to wait until March 13, 2000, to object to the February 10, 2000 Order, because "the Plaintiff has had to devote a lot of his time, over the last couple of weeks, to the other legal actions he is involved in." Again, no substance is provided on the service of process issue. It is apparent that, left to his own devices, the plaintiff would stretch this matter out indefinitely. The motion for enlargement is **DENIED**.

or even identified. The numerous submissions before this court make clear that the plaintiff could have inquired and obtained the name of the booking officer on duty, his supervisor, and the nurses who are assigned to work at the jail, who are currently named as John Doe # 3, John Doe #4, Jane Doe #1, and Jane Doe #2 respectively. There is no indication that the plaintiff attempted to identify any of these anonymous defendants. Therefore, the claims against the unnamed defendants are dismissed under Fed. R. Civ. P. 4(m) without prejudice because service of process has never been perfected as to these defendants. See also Figueroa v. Rivera, 147 F.3d 77, 82-83 (1st Cir. 1998) (upholding district court dismissal under Rule 4(m) when record disclosed no attempt to identify or serve the anonymous defendants); Stratton v. City of Boston, 731 F. Supp. 42, 45 (D. Mass. 1989) (dismissing action under Fed. R. Civ. P. 10(a) when plaintiff failed to inquire about the identity of unnamed defendants).

#### **CONCLUSION**

I **GRANT** the motions to dismiss of Alfred Cichon, David Clewley, Steven Barker, Danny Green, and Douglas Jennings as the Magistrate Judge has recommended. I **AFFIRM** the Magistrate Judge's order denying the plaintiff's motion to amend. I **AFFIRM** the Magistrate Judge's order dismissing Allied Resources for Correctional Health. I **DISMISS WITHOUT PREJUDICE** the claims against John Doe #3, John Doe #4, Jane Doe #1, and Jane Doe #2.

**SO ORDERED.**

**DATED THIS 8TH DAY OF MARCH, 2000.**

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**D. BROCK HORNBY**  
**UNITED STATES CHIEF DISTRICT JUDGE**



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