

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

James P. Story et al. v. Angela Pavao et al.

Story v. Pavao · No. 2:25-cv-00329-DBB-JCB · Decided March 6, 2026

SUMMARY

The United States District Court for the District of Utah overruled the plaintiffs’ objection and adopted in part the magistrate judge’s Report and Recommendation. The court dismissed the complaint without prejudice based on insufficient service and failure to state plausible federal claims, denied the motions for injunctive relief and leave to amend as presented, and granted plaintiffs 30 days to file an amended complaint.

CASE DETAILS

COURT	United States District Court for the District of Utah
WRITING FOR THE COURT	David Barlow
JURISDICTION	United States District Court for the District of Utah
DECIDED	March 6, 2026
DOCKET	2:25-cv-00329-DBB-JCB
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiffs objected to a magistrate judge's report and recommendation recommending dismissal. The district court conducted de novo review of the specifically objected-to portions, overruled the objection, adopted the report and recommendation in part, granted defendants' motions to dismiss, denied leave to amend as futile, denied or denied as moot the requested injunctive relief, and dismissed the complaint without prejudice with a 30-day opportunity to amend.
STANDARD OF REVIEW	De novo review of portions of a magistrate judge's report and recommendation to which a timely and specific objection is made; clear-error review of unobjected-to portions.
PRECEDENTIAL VALUE	unknown

TOPICS

- motions to dismiss
- service of process
- motion to amend
- injunctions
- section 1983

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the district court should conduct de novo review of the objected-to portions of the magistrate judge's report and recommendation.
2. Whether defendants who were not properly served within 90 days should be dismissed under Federal Rule of Civil Procedure 4(m).
3. Whether the complaint stated plausible federal claims under Federal Rule of Civil Procedure 12(b)(6).
4. Whether plaintiffs should be granted leave to amend their complaint.
5. Whether plaintiffs were entitled to a temporary restraining order or preliminary injunction.

HOLDINGS

1. A timely and fairly specific objection requires de novo review of the challenged portions of a magistrate judge's report and recommendation, while unobjected-to portions are reviewed for clear error.
2. Defendants who were not properly served within 90 days after the complaint was filed must be dismissed without prejudice under Rule 4(m) when the plaintiff fails to demonstrate compliance after notice and an opportunity to do so.
3. The complaint failed to state a claim under Rule 12(b)(6) because it did not include sufficient factual allegations to make any asserted federal cause of action plausible.
4. Dismissal of the unidentified Doe defendants was appropriate because plaintiffs failed to identify them after nearly ten months and the Federal Rules of Civil Procedure do not provide for suit against persons solely under fictitious names.
5. Leave to amend may be denied when amendment would be futile because the proposed amended complaint would still fail to state a plausible claim, although the court granted plaintiffs one final opportunity to file a compliant amended complaint.
6. Plaintiffs were not entitled to injunctive relief because the complaint had been dismissed and, independently, plaintiffs failed to show a substantial likelihood of success on the merits.

KEY QUOTATIONS

"If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time."

"Only government action, and not the conduct of private parties, implicates the Fourth and Fourteenth Amendments[.]"

"To obtain a preliminary injunction, the movant must show (1) he 'is substantially likely to succeed on the merits,' (2) he 'will suffer irreparable injury if the injunction is denied,' (3) his 'threatened injury outweighs the injury the opposing party will suffer under the injunction,' and (4) 'the injunction would not be adverse to the public interest.'"

FACTUAL BACKGROUND

Plaintiffs sued more than thirty individuals and entities purportedly connected to their foreclosed \$792,000 mortgage. They asserted claims under the Fourth and Fourteenth Amendments, 42 U.S.C. §§ 1983 and 1985, RICO, the Tucker Act, the Hobbs Act, and the Sherman Act, among other claims. Plaintiffs failed to properly serve the defendants within 90 days, did not provide the required proof of service, and did not comply with an order to show cause. The complaint also lacked factual allegations plausibly supporting the asserted federal claims.

PROCEDURAL HISTORY

Plaintiffs filed a complaint against more than thirty individuals and entities concerning their foreclosed mortgage. Defendants moved to dismiss based on failure to state a claim and failure to effect service. After plaintiffs failed to provide adequate proof of service or comply with an order to show cause, the magistrate judge recommended dismissal for lack of subject-matter jurisdiction and failure to prosecute, or alternatively dismissal under Rules 4 and 12(b)(6). The district court found subject-matter jurisdiction, adopted the alternative recommendation in part, dismissed the complaint without prejudice, and allowed one final opportunity to amend.

DISPOSITION

dismissed

CASES CITED

- United States v. 2121 E. 30th St., 73 F.3d 1057, 1060 (10th Cir. 1996)
- Coomer v. Make Your Life Epic, LLC, 140 F.4th 1269, 1277 (10th Cir. 2025)
- Johnson v. Progressive Leasing, No. 2:22-cv-00052, 2023 WL 4044514, at *2 (D. Utah June 16, 2023)
- Johnson v. Zema Sys. Corp., 170 F.3d 734, 739 (7th Cir. 1999)
- Schaffrath ex rel. R.J.J. v. Thomas, 993 F. Supp. 842, 845 (D. Utah 1998)
- Thompson v. Galetka, 42 Fed. App'x 397, 399 (10th Cir. 2002)
- Coulter v. Butler, CIV-24-835, 2025 WL 923504, at *2 (W.D. Okla. Mar. 26, 2025)
- Woodham v. Hireright, LLC, No. 25-4119, 2026 WL 412582, at *2 (10th Cir. 2026)
- Coe v. U.S. Dist. Ct. for Dist. of Colo., 676 F.2d 411, 415 (10th Cir. 1982)
- Culp v. Williams, 456 Fed. App'x 718, 720 (10th Cir. 2012)
- Price-Cornelison v. Brooks, 524 F.3d 1103, 1115-16 (10th Cir. 2008)
- Brokers' Choice of Am., Inc. v. NBC Universal, Inc., 757 F.3d 1125, 1143 (10th Cir. 2014)
- Allen v. Briggs, 331 Fed. App'x 603, 605 (10th Cir. 2009)
- Gaddy v. Corp. of the President of the Church of Jesus Christ of Latter-Day Saints, 148 F.4th 1202, 1210 (10th Cir. 2025)
- Wisdom Ministries, Inc. v. Garrett, No. 23-5098, 2024 WL 3770934, at *3 (10th Cir. 2024)
- Sinclair Wyo. Ref. Co. v. A & B Builders, Ltd., 989 F.3d 747, 777 (10th Cir. 2021)
- Bylin v. Billings, 568 F.3d 1224, 1229 (10th Cir. 2009)

- Berneike v. CitiMortgage, Inc., 708 F.3d 1141, 1151 (10th Cir. 2013)
- Thomas v. Carson, 30 Fed. App'x 770, 772 (10th Cir. 2002)
- Gladstone v. Owens, No. 25-1345, 2025 WL 3441796, at *3-*4 (10th Cir. 2025)
- Beltronics USA, Inc. v. Midwest Inventory Distrib., LLC, 562 F.3d 1067, 1070 (10th Cir. 2009)

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