

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

RICHARD MATTHEWS,

Plaintiff,

v.

**JAMALE R. GRIFFIN, RAY MARTINEZ,
KATHRYN B. JENSEN de LUGO,
DENESE MARSHALL, JEWEL V. OWEN,
G. RITA DUDLEY-GRANT, LINDSY
WAGNER, LORI THOMPSON,
and CHRISTOPHER KROBLIN,**

Defendants.

1:24-cv-00005-WAL-EAH

**TO: Richard Matthews, *Pro Se*
Shari Natalya D'Andrade, Esq.
Chivonne Thomas, Esq.**

REPORT & RECOMMENDATION

THIS MATTER comes before the Court following the issuance of an Order to Show Cause on July 7, 2025 directing Plaintiff Richard Matthews, appearing pro se, to show cause at a July 16, 2025 hearing why this Court should not recommend to the District Judge that Mr. Matthews's First Amended Complaint be dismissed as to Defendants Jamale R. Griffin, Ray Martinez, Katherine Jensen de Lugo, and Denese Marshall for failure to properly and timely serve them, given the affidavits of service that he had submitted. Dkt. No. 107. After the July 16, 2025 hearing, the Court discharged the Order to Show Cause, and permitted Mr. Matthews until August 15, 2025 to properly serve those Defendants and to file proofs of service with the Court. Dkt. No. 114. Mr. Matthews did not file proofs of service by the August 15, 2025 deadline or anytime thereafter. On October 9, 2025, the Court issued another Order to Show Cause, directing Mr. Matthews to show cause in a written submission by October 23, 2025 why the Court should not recommend to the District Judge that the First Amended

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Complaint be dismissed as to the four Defendants for failure to comply with the Court's July 16, 2025 Order and failure to timely effect service on those Defendants. Dkt. No. 138. Based on Mr. Matthews's response, Dkt. No. 148, the Court recommends to the District Judge that the First Amended Complaint be dismissed for failure to comply with the Court's July 2025 Order and for failure to timely effect service on Defendants Jamale R. Griffin, Katherine Jensen de Lugo, and Denese Marshall, and on Defendant Ray Martinez in his official capacity.

BACKGROUND

In June 2024, Mr. Matthews filed his First Amended Complaint ("FAC") against nine Defendants. Dkt. No. 34-2. Among the Defendants were Jamale R. Griffin, identified as the President of the Law Enforcement Supervisor's Union ("LESU"); Ray Martinez, identified as the Police Commissioner of the Virgin Islands Police Department ("VIPD"); Kathryn B. Jensen de Lugo, identified as Paternity & Child Support Director at the Virgin Islands Department of Justice, Division of Paternity & Child Support; and Denese Marshall, identified as a Clinical Psychologist with the Police Behavioral Services Unit, VIPD. *Id.* at 1-2. On June 14, 2024, Mr. Matthews forwarded his initial Complaint, the Summonses, and the First Amended Complaints to two process servers: Marlon Richardson, located on St. Thomas, and Darwin Dowling, located on St. Croix. Dkt. No. 35.

On June 21, 2024, Mr. Matthews filed Proofs of Service and Affidavits of Service on, inter alia, Defendants Dr. Denese Marshall, Dkt. No. 38 and Kathryn Jensen de Lugo, Dkt. No. 42. The Proof of Service and Affidavit of Service on Dr. Marshall indicated that Mr. Dowling personally served her on June 14, 2024, Dkt. Nos. 38, 38-1. The Proof of Service and Affidavit

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of Service on Ms. Jensen De Lugo indicated that Mr. Dowling served her by serving Sean Bailey, Esq., at the Virgin Islands Department of Justice on June 17, 2024, Dkt. Nos. 42, 42-1.

On July 29, 2024, Mr. Matthews filed a Proof of Service showing that Mr. Dowling served the LESU (although the actual named Defendant in this action is Jamale Griffin, President of the LESU) through Attorney Pamela Colon, on July 24, 2024. Dkt. No. 73. The Affidavit of Service reflected service on Attorney Colon. Dkt. No. 73-1. On August 1, 2024, Mr. Matthews filed an Affidavit of Service showing that Mr. Richardson personally served Police Commissioner Martinez on July 25, 2024. Dkt. No. 75. While other Defendants have appeared in this case, Defendants Marshall, Jensen de Lugo, Griffin, and Martinez have not appeared.

On July 7, 2025, the Court issued an Order to Show Cause, setting a hearing for July 16, 2025, directing Mr. Matthews to show cause why the Court should not recommend to the District Judge that the FAC be dismissed as to the four non-appearing Defendants for failure to properly serve them within 90 days, as required by Fed. R. Civ. P. 4(m). Dkt. No. 107. At the hearing, the Court stressed that service had to comply with the Federal and Local Rules, but that it could not advise him. The Court concluded that, because Mr. Matthews was proceeding pro se, it would provide him thirty additional days to properly serve the remaining four Defendants and file Affidavits of Service specifying how they were each served. The Court discharged the Order to Show Cause and issued an Order on July 16, 2025 requiring Mr. Matthews to file notice of proper service by August 15, 2025. Dkt. No. 114. The Order also provided that if he did not file notice of service by that deadline, the Court would recommend to the District Judge that the FAC be dismissed as to the four Defendants for

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failure to properly and timely serve them. *Id.* The Court issued numerous summonses on July 18, 2025, including to the Governor and V.I. Attorney General. Dkt. Nos. 115-125.

Mr. Matthews did not file any proofs of service by August 15, 2025. In a Motion for Leave to Amend the First Amended Complaint, filed on October 3, 2025, he expressed his belief that he had served all of the Defendants in accordance with Fed. R. Civ. P. 4(m). Dkt. No. 135-1 at 13-16. On October 9, 2025, the Court issued another Order to Show Cause, directing Mr. Matthews to show cause in a written submission why he did not comply with the July 16, 2025 Order and why the FAC should not be dismissed as to Defendants Griffin, Martinez, Jensen de Lugo, and Marshall for failure to effect proper and timely service. Dkt. No. 138. The Order directed him to specify how service on those four Defendants complied with the Federal and/or Virgin Islands Rules of Civil Procedure by October 23, 2025. *Id.*

On October 23, 2025, Mr. Matthews filed his Response. Dkt. No. 148. He states that he did not ignore the Court's July 16, 2025 Order. *Id.* at 3. Rather, during the period of time the Court provided him to file a Response to the Order to Show Cause, he was busy clarifying the roles of these and other persons/entities in preparation for filing a Second Amended Complaint.¹ He then discussed the propriety of service on the four Defendants.

Defendant Denese Marshall, described in the FAC as a Clinical Psychologist with the Police Behavioral Services Unit, VIPD, was served personally by process server on June 14,

¹ The Court denied Mr. Matthews's three motions to amend his FAC and file a Second Amended Complaint; two of the denials were with prejudice. Dkt. Nos. 129, 137, 153. The Court also denied a related motion for reconsideration, Dkt. No. 147. Thus, any reference to how the four Defendants may be designated in the proposed Second Amended Complaint is irrelevant to the issue before the Court.

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2024. Dkt. No. 38-1. Mr. Matthews states service was executed in accordance with Fed. R. Civ. P. 4(e)(2)(c) and Local Rule 4.1,² permitting service on individuals served in their official or personal capacity. In addition, Fed. R. Civ. P. 4(i)(2) and Local Rule 4.1 “support the expectation that individuals sued in their official capacity will relay service to the appropriate entity.”³ *Id.* at 4. This last statement indicates that Mr. Matthews sued Dr. Marshall in her official capacity.

Defendant Ray Martinez, described in the FAC as the VIPD Police Commissioner, was served personally on July 25, 2024. Dkt. No. 75. Mr. Matthews “[b]elieved [him] to be employed by the main entity at the time of service” (apparently meaning the VIPD). Dkt. No. 148 at 4. He specifically asserts that Martinez was sued in both his personal and official capacities and been personally served (along with Defendant Marshall who was also affiliated with the VIPD) “reinforces constructive notice to the entity.” *Id.* He reiterates that Fed. R. Civ. P. 4(i)(2) and Local Rule 4.1 1 “support the expectation that individuals sued in their official capacity will relay service to the appropriate entity.” *Id.* at 4.

Defendant Kathryn De Lugo, described in the FAC as Paternity & Child Support Director at the Virgin Islands Department of Justice, Division of Paternity & Child Support, was served through Attorney Sean Bailey at the V.I. Department of Justice on June 17, 2024.

² The District Court’s Local Civil Rules do not contain a Rule 4.1. Mr. Matthews apparently means Virgin Islands Rule of Civil Procedure 4, which concern service of summons and complaints and which has numerous provisions. He did not specify which provision was applicable to each Defendant. V.I. R. Civ. P. 4.1 concerns serving other process (i.e., motions), which is not relevant here.

³ If Mr. Matthews meant that service on Denese Marshall would also constitute service on the VIPD, he did not sue the VIPD in his FAC.

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Dkt. No. 42-1. Mr. Matthews asserts that Attorney Bailey appeared on behalf of “De Lugo’s affiliated entity in Superior Court case SX-202-SP-0004 on March 14, 2025, in direct connection with De Lugo’s actions.” Dkt. No. 148 at 4. He provides as an exhibit a copy of a Notice of Appearance by Attorney Bailey in the Superior Court case (where Mr. Matthews as plaintiff was suing, inter alia, the V.I. Department of Justice, Paternity and Child Support Division), dated March 2024. Dkt. No. 148-1 at 2. Mr. Matthews contends that this appearance established Attorney Bailey as counsel for the entity in a matter where Jensen De Lugo’s conduct was central. Plaintiff states that he reasonably believed that Attorney Bailey—as counsel for the entity in a proceeding involving Jensen De Lugo in her official capacity—“could be served with legal documents related to the same factual context.” Dkt. No. 148 at 5. Although Attorney Bailey did not appear in district court, his “Superior Court representation was sufficient to support the presumption of proper service.” *Id.* Mr. Matthews adds that Local Rule 4.1 “permits service through an agent authorized by law or appointment, including counsel who has appeared in related proceedings.” *Id.* Moreover, Attorney Bailey did not object to service or correct the record. *Id.*

Defendant Jamal Griffin, described in the FAC as President of the Law Enforcement Supervisor’s Union, was served through Attorney Pamela Colon on July 24, 2024. Dkt. No. 60. Mr. Matthews explains that Attorney Colon “first appeared on behalf of Griffin’s affiliated entity”—apparently the LESU—in Superior Court case SX-2023-SP-004 on March 7, 2024, and filed an appearance in District Court on May 23, 2024 in case 1:24-cv-0007, a child support matter initiated by Mr. Matthews “as a direct result of Griffin’s actions.” *Id.* He

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attaches as an exhibit a copy of Attorney Colon’s March 2024 Notice of Appearance in the Superior Court case (where Mr. Matthews was suing, inter alia, the LESU). Dkt. No. 148-1 at 4. Mr. Matthews contends that although the District Court case involved different claims, it “arose directly from the factual and procedural context of the current action,” and Attorney Colon filed an appearance “confirming her ongoing representation of the Union.” Dkt. No. 148 at 6. Plaintiff therefore reasonably believed that Attorney Colon, as counsel for the Union in multiple proceedings, could be served for Griffin in his official capacity in this action. *Id.*

Mr. Matthews adds that the four non-responsive Defendants were served with the summons, the original complaint, and the FAC, and the “affiliated entities” of the Defendants were “either directly placed on notice or should have known of the litigation through their designated counsel and the employees sued in their individual capacities.” *Id.* He also provides some case law purportedly in support. *Id.* at 7.

DISCUSSION

I. Service of Process Rules

A. Federal Rule of Civil Procedure 4

The appropriate provision of Rule 4 for serving individuals located in a judicial district of the United States is 4(e). Rule 4(e) provides:

Unless federal law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served in a judicial district of the United States by:

- (1)** following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or
- (2)** doing any of the following:

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- (A) delivering a copy of the summons and of the complaint to the individual personally;
- (B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or
- (C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

Fed. R. Civ. P. 4(e).

Fed. R. Civ. P. 4(j)(2) concerns service on a state or local government. It provides:

(2) State or Local Government. A state, a municipal corporation, or any other state-created governmental organization that is subject to suit must be served by:

- (A) delivering a copy of the summons and of the complaint to its chief executive officer; or
- (B) serving a copy of each in the manner prescribed by that state's law for serving a summons or like process on such a defendant.

Fed. R. Civ. P. 4(j)(2)(A), (B). In *Mamourette v. Jerome*, the Court explained how Fed. R. Civ. P. 4(j)(2)(A) applied to Government of the Virgin Islands (“GVI”) officials sued in their official capacities:

An action against a government official in their official capacity is necessarily an action against the government. Thus, where defendants are sued in their official capacity as officers or employees of the GVI, the suit is against the GVI, and the Governor must be served. *See* Fed. R. Civ. P. 4(j)(2) (requiring service on chief executive officer); 48 U.S.C. § 1591 (“The executive power of the Virgin Islands shall be vested in an executive officer whose official title shall be the ‘Governor of the Virgin Islands.’ ”); *Tobal*, 2022 WL 136841, at *8 (“When the Government of the Virgin Islands, one of its agencies, or a government official is named as a Defendant, courts have repeatedly held that the Governor must be served with process.”).

Mamourette v. Jerome, No. 13-cv-117, 2023 WL 5938608, at *5 (D.V.I. Aug. 7, 2023), *report and recommendation adopted*, 2023 WL 5928134 (D.V.I. Sept. 12, 2023). “The plaintiff bears the burden of establishing that service of process has been accomplished in a manner that

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complies with Federal Rule of Civil Procedure 4.” *Pickering v. Arcos Dorados Puerto Rico, Inc.*, No. 14-cv-92, 2016 WL 1271024, at *4 (D.V.I. Mar. 30, 2016) (citation modified).

B. Virgin Islands Rule of Civil Procedure 4

Rule 4 of the Virgin Islands Rules of Civil Procedure governs service, inter alia, on individuals located in the Virgin Islands, as well as on Government of the Virgin Islands officers and employees served in their official and individual capacities. Service on an individual may be effected by delivering the summons and complaint to the individual personally; leaving a copy at their dwelling/usual place of abode with someone of suitable age and discretion who resides there; delivering the summons and complaint to an agent authorized by appointment or by law to receive service of process; or completing service in another manner approved by order of the court. V.I. R. Civ. P. 4(e)(1)-(4).

In order to serve a Government of the Virgin Islands officer or employee in an official capacity, a party must serve: (1) the Government of the Virgin Islands as provided in Rule 4(i)(1)⁴; (2) the chief executive officer of the entity; and (3) any officer or employee named in the action. V.I. R. Civ. P. 4(i)(2)(A)(i)-(iii). With regard to Government officers or employees served in their individual capacities, a party must serve the Government of the Virgin Islands as provided in Rule 4(i)(1) and also serve the officer or employee as provided in V.I. Rule 4(e). V.I. R. Civ. P. 4(i)(3)(A), (B).

⁴ Pursuant to V.I. R. Civ. P. 4(i)(1), the Government of the Virgin Islands is served by serving a copy of the complaint on the Governor and upon the Attorney General of the Virgin Islands.

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II. Application

Although the FAC itself does not specify whether Mr. Matthews has sued the four non-appearing Defendants in their official and/or individual capacities, his Response to the Order to Show Cause states that Martinez was sued in his personal and official capacities, and that Marshall, Jensen De Lugo, and Griffin were sued in their official capacities.⁵ Dkt. No. 148 at 4-6. As explained below, service on all of these Defendants, except Martinez in his individual capacity, was insufficient.

A. Defendant Marshall

The FAC identified Defendant Denese Marshall as a Clinical Psychologist with the Police Behavioral Services Unit of the VIPD. Dkt. No. 34-2 at 2. As an employee of the VIPD sued in her official capacity, Fed. R. Civ. P. 4(j)(2) (A) or (B) applies, with Rule 4(j)(2)(B) importing the service requirements of V.I. R. Civ. P. 4(i)(2)(A)(i)-(iii). Pursuant to Rule (4)(j)(2)(A), to properly serve Dr. Marshall, Mr. Matthews would have had to have served the Governor of the Virgin Islands. *See Mamouzette*, 2023 WL 5938608, at *5. If he was serving Dr. Marshall under Rule 4(j)(2)(B), he would have had to have served: (1) the Government of the Virgin Islands as provided in V.I. Rule 4(i)(1)—*i.e.*, the Governor and the Attorney General of the Virgin Islands; (2) the chief executive officer of the entity—the

⁵ Although appearing pro se, Mr. Matthews is an experienced litigator, having filed many state and federal actions. The Court therefore accepts his considered position that he sued Defendant Martinez in his official and individual capacities and Defendants Griffin, Jensen De Lugo, and Griffin in their official capacities.

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Commissioner of the Virgin Islands Police Department; and (3) any officer or employee named in the action (i.e., Dr. Marshall).

The affidavit of service shows that Defendant Marshall was served personally by a process server on June 14, 2024. Dkt. No. 38-1. The other entities required to be served pursuant to Fed. R. Civ. P. 4(j)(1)—the Governor—or 4(j)(2)—the Governor, the Attorney General, and the Commissioner of the VIPD—were not served. Although Dr. Marshall was served individually, pursuant to Fed. R. Civ. P. 4(e)(2)(A) or V.I.R. Civ. P. 4(i)(2)(A)(ii), that by itself was insufficient to effect proper service on her in her official capacity. Consequently, service on Defendant Marshall was defective, and she has not been properly served with the FAC in this action.

B. Defendant Martinez

Defendant Ray Martinez was described in the FAC as the VIPD Commissioner. Dkt. No. 34-2 at 2. Mr. Matthews has indicated that he has sued him both in his official and individual capacities. Dkt. No. 148 at 4. Similar to Defendant Marshall, when suing an officer of the Virgin Islands Government in his official capacity, Fed. R. Civ. P. 4(j)(1) or (2) applies. Pursuant to Rule 4(j)(2)(A), to properly serve Defendant Martinez, Mr. Matthews would have had to have served the Governor of the Virgin Islands.⁶ See *Mamouzette*, 2023 WL 5938608, at *5. If he sought to serve Mr. Martinez under Rule 4(j)(2)(B), which imports the

⁶ Given that Commissioner Martinez is no longer serving as Police Commissioner, and the current Police Commissioner would be substituted for Mr. Martinez being sued in his official capacity, pursuant to Fed. R. Civ. P. 25(d), the fact that Mr. Martinez was never properly sued in his official capacity would make any substitution moot.

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service requirements of V.I. R. Civ. P. 4(i)(2)(A)(i)-(iii)., he would have had to have served: (1) the Government of the Virgin Islands as provided in V.I. Rule 4(i)(1)—*i.e.*, the Governor and the Attorney General of the Virgin Islands; (2) the chief executive officer of the entity—the Commissioner of the Virgin Islands Police Department; and (3) any officer or employee named in the action. Service on Commissioner Martinez under Rule 4(j)(2)(B) would satisfy prongs (2) and (3). However, because the Governor has not been served, Mr. Matthews did not effect proper service on Mr. Martinez in his official capacity under Fed. R. Civ. P. 4(j)(1), (2). Consequently, service on Defendant Martinez in his official capacity was defective, and he has not been properly served with the FAC in that capacity.

To serve Defendant Martinez individually, under Fed. R. Civ. P. 4(e)(2)(A), Mr. Matthews would have had to serve him personally. The affidavit of service provides that the process server personally served Mr. Martinez on July 25, 2024. Dkt. No. 75. This was proper service of Mr. Martinez in his individual capacity.

C. Defendant Jensen De Lugo

Defendant Kathryn B. Jensen de Lugo was identified in the FAC as Paternity & Child Support Director at the Virgin Islands Department of Justice, Division of Paternity & Child Support. Dkt. No. 34-2 at 2. Mr. Matthews indicates that he sued Ms. Jensen De Lugo in her official capacity. Dkt. No. 148 at 4-5. The Affidavit of Service on Ms. Jensen De Lugo indicated that Mr. Dowling served her by serving Sean Bailey, Esq. at the Virgin Islands Department of Justice on June 17, 2024, Dkt. No. 42-1. In his Response, Mr. Matthews explained that, in March 2024, Attorney Bailey appeared on behalf of the Division of Paternity and Child

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Support in a Superior Court case (where Mr. Matthews appeared as plaintiff) that had a “direct connection with De Lugo’s actions” (the “direct connection” to what is unspecified). Dkt. No. 448 at 4. He therefore “reasonably believed” that Attorney Bailey, as counsel for the Division of Paternity & Child Support, in a Superior Court proceeding ostensibly unrelated to the instant proceeding, but which involved Jensen De Lugo in her official capacity, could properly be served with legal documents in this action as an agent for Jensen De Lugo.

But Mr. Matthews sued Jensen De Lugo in her official capacity as an employee of the Department of Justice, a Virgin Islands agency. Thus, in order to comply with Rule 4(j)(2)(A), Mr. Matthews would have had to have served the Governor, and he did not do so. If he attempted to comply with Rule 4(j)(2)(B), he would have had to have served: (1) the Government of the Virgin Islands as provided in V.I. Rule 4(i)(1)—*i.e.*, the Governor and the Attorney General of the Virgin Islands; (2) the chief executive officer of the entity—the Attorney General; and (3) any officer or employee named in the action—*i.e.*, Jensen De Lugo. But he did not satisfy any of these requirements under Rule 4(j)(2)(A) or (B), and therefore service on Jensen De Lugo in her official capacity was not properly effected.

Service on Attorney Bailey, only, as a purported agent for Jensen De Lugo under Rule 4(e)(2)(C) was improper for a number of reasons. First, Mr. Matthews did not sue Jensen De Lugo individually. Nor did he sue the Division of Paternity & Child Support, which Attorney Bailey represented in a different action. But even if he had sued Jensen De Lugo individually, his justification for serving Attorney Bailey as an “an agent authorized by appointment or by law to receive service of process” under Fed. R. Civ. P. 4(e)(2)(C), fails because he provided

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no evidence showing that Jensen De Lugo authorized Attorney Bailey to accept service for her as her agent. A plaintiff bears the burden of establishing an agency relationship between the defendant and the purported agent. *Parikh v. Twp. of Edison*, No. 08-3300, 2009 WL 5206011, at *8 (D.N.J. Dec. 29, 2009). “While good faith reliance on the apparent authority of an individual to receive service may satisfy the requirements of Rule 4(e)(2)(C) under certain circumstances, any apparent authority *must stem from the actions of the defendant rather than from the purported agent.*” *Air Marshal Ass’n v. Sec’y of Dep’t of Homeland Sec.*, No. 22-cv-2254, 2025 WL 388814, at *3 (E.D. Pa. Feb. 4, 2025) (citing *Laffey v. Plousis*, No. 05-2796, 2008 WL 305289, at *5 (D.N.J. Feb. 1, 2008), *aff’d*, 364 F. App’x 791 (3d Cir. 2010) (emphasis added)). The agency relationship does not depend on a plaintiff’s *belief* as to whether the person served is an agent of a defendant, but on some actual evidence to support that position, and no competent evidence was provided. The fact that Attorney Bailey represented the Division of Paternity & Child Support in an unrelated state court action provides no support for Mr. Matthews’s belief that he would also represent Jensen De Lugo in a district court action where the Division of Paternity & Child Support is not a defendant. Moreover, “[m]ere acceptance of service by an employee does not establish that the employee was authorized to accept service.” *Tobal v. Virgin Islands Police Dep’t*, No. 10-cv-0062, 2022 WL 136841, at *9 (D.V.I. Jan. 13, 2022) (quoting *Snyder v. Swanson*, 371 F. App’x 285, 286-87 (3d Cir. 2010) (service on party’s attorney who was not authorized to accept service of process failed to effect service on individual defendants)); *Laffey v. Plousis*, No. 05-cv-2796, 2008 WL 305289, at *5 (D.N.J. Feb. 1, 2008) (service improper because plaintiff did

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not show that U.S. Marshal's Office employee had actual or apparent authority to accept service on behalf of the individual defendants). Accordingly, Defendant Kathryn Jensen De Lugo, sued in her official capacity, was not properly served in this action.

D. Defendant Griffin

Defendant Jamale R. Griffin was identified in the FAC as the President of the Law Enforcement Supervisor's Union ("LESU"). Dkt. No. 34-2. The FAC named Mr. Griffin as a Defendant, not the LESU. Mr. Matthews filed a Proof of Service showed that the process server served the LESU through Attorney Pamela Colon on July 24, 2024. Dkt. No. 73. Since Mr. Griffin is not identified as an employee or official of the Virgin Islands Government, but as a union president, it is unclear whether or how Mr. Matthews can sue him in his "official" capacity. Even if he intended to do so, the reasoning above, requiring service on the Governor under Fed. R. Civ. P. 4(j)(2)(A) and (B), would apply here as well, and that did not occur—such that service on Mr. Griffin in his official capacity was not properly effected.

Even if Mr. Matthews intended to sue Mr. Griffin as an individual, given that he argued that service was proper through an agent—Attorney Pamela Colon—the same analysis above regarding the insufficiency of Attorney Bailey being served as the agent for Defendant Jensen De Lugo applies here. First, Mr. Matthews did not sue the LESU; he served Mr. Griffin as its President. His justification for serving Attorney Colon, as an "an agent authorized by appointment or by law to receive service of process" under Fed. R. Civ. P. 4(e)(2)(C), fails because he provided no evidence showing that Mr. Griffin authorized Attorney Colon to accept service for him as his agent. *Air Marshal Ass'n*, 2025 WL 388814, at *3. Moreover,

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Attorney Colon representing the LESU, not Mr. Griffin, in a state court action does not support any reasonable conclusion that she would also be representing Mr. Griffin in this completely different matter in a different court.

In stating that “counsel representing an entity in matters involving its employees will relay service to the entity when those employees are sued in their official capacity,” Dkt. No. 148 at 6, Mr. Matthews may be arguing that actual notice of a complaint to an attorney can overcome defective service of process. However, the Third Circuit has long held that “[a]lthough notice underpins Federal Rule of Civil Procedure 4 concerning service, notice cannot by itself validate an otherwise defective service.” *Grand Entm’t Group, Ltd. v. Star Media Sales, Inc.*, 988 F.2d 476, 492 (3d Cir. 1993); *see also Pickering*, 2016 WL 1271024, at *4 (actual notice of the lawsuit does not replace proper service). Thus, even if any of the Defendants had actual notice of Plaintiff’s Complaint, such notice does not satisfy Mr. Matthews’s obligation to properly serve them.

III. Recommendation of Dismissal under Fed. R. Civ. P. 4(m)

Federal Rule of Civil Procedure 4(m) provides:

Time Limit for Service. 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. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period[.]

Fed. R. Civ. P. 4(m). At present, it has been over 500 days since the FAC has been filed and Defendants Griffin, Jensen De Lugo, Marshall and Martinez in his official capacity have not been properly served. The time-period for effecting service under Rule 4(m) has elapsed.

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In July 2025, this Court issued an Order to Show Cause directing Mr. Matthews to explain why the Court should not recommend to the District Judge that the FAC should be dismissed against the four non-appearing Defendants for failure to properly serve them within the 90 days required by Fed. R. Civ. P. 4(m). Dkt. No. 107. After holding a hearing, the Court provided Mr. Matthews an additional 30 days to serve the Defendants, with a deadline of August 15, 2025. When Mr. Matthews did not comply with that Order and deadline, the Court issued another Order to Show Cause in October 2025 directing him, once again, to explain why the Court should not recommend to the District Judge that the FAC should be dismissed against the four Defendants for failure to properly and timely serve them. Dkt. No. 138. In his Response, Mr. Matthews persisted in his position that he had served the four Defendants properly and timely. Dkt. No. 148.

Having given Mr. Matthews appropriate notice that if the four Defendants were not properly served and if he failed to do so it would recommend dismissal, and having given him additional time to effect proper service which he did not do, the Court hereby recommends that the FAC be dismissed against Defendants Marshall, Griffin, Jensen De Lugo, and Martinez in his official capacity under Fed. R. Civ. P. 4(m). *See Parker v. Aboulfatch*, No. 09-cv-0196, 2012 WL 360012, at *1 (M.D. Pa. Feb. 2, 2012) (dismissing without prejudice complaint against unserved defendants after court had given appropriate notice to plaintiff). Such dismissal should be without prejudice. *See Matta v. Gov't of Virgin Islands*, No. 11-cv-0091, 2016 WL 122954, at *1 (D.V.I. Jan. 8, 2016) (opining that dismissal with prejudice is inappropriate under Rule 4(m)).

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CONCLUSION

Accordingly, the Court **RECOMMENDS** that Mr. Matthews's First Amended Complaint, Dkt. No. 34-2, be **DISMISSED WITHOUT PREJUDICE** for failure to timely and properly serve Defendants Jamale R. Griffin, Kathryn B. Jensen De Lugo, and Denese Marshall, and Defendant Ray Martinez in his official capacity.

Any objections to this Report and Recommendation must be filed in writing within fourteen (14) days of receipt of this notice, 28 U.S.C. § 636(b)(1), and must "specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis of such objection." LRCi 72.3. Failure to file objections within the specified time shall bar the aggrieved party from attacking such Report and Recommendation before the assigned District Court Judge. *See, e.g., Thomas v. Arn*, 474 U.S. 140 (1985).

ENTER:

Dated: December 3, 2025

/s/ Emile A. Henderson III
EMILE A. HENDERSON III
U.S. MAGISTRATE JUDGE