

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

WAYNE A. SILVA,	:	
Plaintiff,	:	
	:	
v.	:	C.A. No. 18-650JJM
	:	
ROBERT M. FARRELL,	:	
Defendant.	:	

REPORT AND RECOMMENDATION

PATRICIA A. SULLIVAN, United States Magistrate Judge.

Pending before the Court is Plaintiff Wayne A. Silva's Fed. R. Civ. P. 60 motion. ECF No. 11. The motion appears to request relief from an Order dated January 30, 2019 (ECF No. 10, "the Order"), which adopted a report and recommendation (ECF No. 8). The Order enjoined Plaintiff from filing further motions or other documents in this matter, except for a single Fed. R. Civ. P. 60 motion and notice of appeal, without first obtaining permission from a judge of this Court. Mindful of the Court's obligation to read with leniency the filings of *pro se* litigants like Plaintiff, Erickson v. Pardus, 551 U.S. 89, 94 (2007), the Court interprets the motion as invoking both Fed. R. Civ. P. 60(a) and 60(b), and as seeking relief both from the Order enjoining him from further filings, as well as from the final judgment entered against him on December 31, 2018, as to which reconsideration was denied by Text Order on January 15, 2019 ("the Judgment").

Like his prior filings in this case and in the other case filed in this District, Plaintiff's motion borders on incomprehensible. See Silva v. Farrell, No. CV 18-650JJM, 2018 WL 6505367, at *1 n.2 (D.R.I. Dec. 11, 2018). It mentions words and phrases like "forfeiture," "jurisdiction," and "avoidance of service of process," with no indication how these concepts relate to whatever relief Plaintiff may be seeking. It cites 18 U.S.C. § 1963, which sets out

criminal penalties in RICO criminal cases, with no indication how that provision has anything to do with this civil case. Similarly, it cites 18 U.S.C. § 1073, which deals with flight to avoid criminal prosecution or testimony, with no hint why such a criminal statute is pertinent. It is entirely silent regarding any mistake, error or other flaw affecting the Court’s reasoning for the entry of the Judgment and of the Order.

Fed. R. Civ. P. 60(a) provides for the correction of a clerical mistake or other error affecting a judgment or order. It “is appropriate where ‘the judgment failed to reflect the court’s intention.’ [The Rule] does not, however, provide for the correction of ‘the deliberate choice of the district judge.’” Bowen Inv. Inc. v. Carneiro Donuts, Inc., 490 F.3d 27, 29 (1st Cir. 2007). As with the four Fed. R. Civ. P. 60(a) motions that the Court denied in Silva v. Thornton, 18-cv-95-WES, having reviewed Plaintiff’s latest motion carefully, the Court is satisfied that there is no suggestion of mistake or error so that “Rule 60(a) plainly does not apply.” AngioDynamics, Inc. v. Biolitec, 880 F.3d 596, 599 (1st Cir. 2018).

Fed. R. Civ. P. 60(b) is more substantive; it provides several grounds on which a “court may relieve a party or its legal representative from a final judgment, order, or proceeding[.]” including, *inter alia*, mistake, inadvertence, surprise or excusable neglect. Fed. R. Civ. P. 60(b)(1). “While many courts broadly allow relief under Rule 60(b),” the First Circuit “‘has taken a harsher tack.’” Skrabec v. Town of N. Attleboro, 321 F.R.D. 46, 48 (D. Mass. 2017), aff’d, 878 F.3d 5 (1st Cir. 2017) (quoting Davila-Alvarez v. Escuela de Medicina Universidad Cent. del Caribe, 257 F.3d 58, 64 (1st Cir. 2001)). The First Circuit “has held that Rule 60 relief is ‘extraordinary in nature and . . . should be granted sparingly.’” Id. (quoting Rivera-Velazquez v. Hartford Steam Boiler Inspection & Ins. Co., 750 F.3d 1, 19 (1st Cir. 2014)). “[A] party who seeks relief under [Rule 60(b)] must establish, at the very least, that his motion is timely; that

exceptional circumstances exist, favoring extraordinary relief; that if the judgment is set aside, he has the right stuff to mount a potentially meritorious claim or defense; and that no unfair prejudice will accrue to the opposing parties should the motion be granted.” Rivera-Velazquez, 750 F.3d at 3-4 (internal quotation marks omitted). Having carefully reviewed Plaintiff’s motion in light of these principles, the Court concludes that it falls hopelessly short of even suggesting a conceivable basis for relief under Fed. R. Civ. P. 60(b), never mind exceptional circumstances. Nansamba v. N. Shore Med. Ctr., Inc., 727 F.3d 33, 41 (1st Cir. 2013) (because record does not reveal grounds for relief, Rule 60(b) motion properly denied).

Based on the foregoing, I recommend the Court deny Plaintiff’s motion.

A note of caution: in Silva v. Thornton, Plaintiff demonstrated a knack for filing multiple Fed. R. Civ. P. 60 motions. See 18-95 ECF Nos. 13, 14, 16, 22.¹ Plaintiff is reminded that, while the Order is in place, the Court will not accept another Fed. R. Civ. P 60 motion in this case.

Any objection to this report and recommendation must be specific and must be served and filed with the Clerk of the Court within fourteen (14) days after its service on the objecting party. See Fed. R. Civ. P. 72(b)(2); DRI LR Cv 72(d). Failure to file specific objections in a timely manner constitutes waiver of the right to review by the district judge and the right to appeal the Court’s decision. See United States v. Lugo Guerrero, 524 F.3d 5, 14 (1st Cir. 2008); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Patricia A. Sullivan
PATRICIA A. SULLIVAN
United States Magistrate Judge
February 13, 2019

¹ And after the Court restricted his filing privileges in that case, he submitted documents in violation of the restrictions, which the Court returned. 18-95 ECF Nos. 24, 25. One purported to be fifth Fed. R. Civ. P. 60 motion.