

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Boyd N. Boland

Civil Action No. 09-cv-00426-WYD-BNB

VINCENT GAGLIARDI,

Plaintiff,

v.

CITY MANAGER, NAME UNKNOWN,
CHIEF OF POLICE, CHARLES GLORIOSO,
OFFICER GABE VAZQUEZ,
OFFICER, ARCHIE VIGIL,
OFFICER, DAN DURAN,
POLICE DISPATCHER, NAME UNKNOWN, and
UNKNOWN EMPLOYEE 1 AND 2,

Defendants.

ORDER

This matter arises on the plaintiff's **Notice to the Court and Plaintiff's** [sic] **Motion to Hold Defendant(s) Accountable for Failure to Waive Service Under FRCP Rule 4 (d) (2) (A) (B)** [Doc. # 59, filed 09/22/2009] (the "Motion"). The Motion is frivolous and is DENIED.

On September 21, 2009, I held a hearing on the defendants' motion to quash service [Doc, #33] and the plaintiff's motion to strike the defendants' motion to quash [[Doc. #41]. During the hearing, counsel for the defendants declined to waive service of process for the defendants. The plaintiff requests that the court "hold the Defendants responsible and accountable to ALL service expenses under FRCP Rule 4 (d) (2) (A) (B)."

Rule 4(d)(2)(A)(B) provides that "[i]f a defendant located within the United States fails, without good cause, to sign and return a waiver requested by a plaintiff located within the United

States, the court must impose on the defendant the expenses later incurred in making service.”

The plaintiff has not served a written request for waiver of service on the defendants. Nor has he demonstrated that he has successfully served the defendants. Therefore, he does not meet the requisites of Rule 4. Under these circumstances, the motion is frivolous.

IT IS ORDERED that the Motion is DENIED.

IT IS FURTHER ORDERED that the plaintiff shall cease filing frivolous motions. The plaintiff is cautioned that failure to comply with this order may result in the imposition of sanctions, including dismissal of the case.

Dated September 24, 2009.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge