

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION**

KARL ANDREW BROWN,

Plaintiff,

v.

CASE NO. 4:13cv462-RH/CAS

FLORIDA DEPARTMENT OF HEALTH,

Defendant.

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**ORDER EXTENDING THE DEADLINE  
FOR SERVING PROCESS**

This case is before the court on the magistrate judge's second report and recommendation, ECF No. 17, and the objections, ECF No. 21. I have reviewed *de novo* the issues raised by the objections.

The recommendation is for dismissal of the case based on the plaintiff's failure to serve process by the deadline set out in Federal Rule of Civil Procedure 4(m). The defendant is the Florida Department of Health. The head of the Department is the Surgeon General. The plaintiff, who is proceeding *pro se* and *in forma pauperis*, says he mailed the summons and a copy of the complaint to the Surgeon General. But a summons and complaint can be served by mail only with

the defendant's consent. *See, e.g., Yates v. Baldwin*, 633 F.3d 669, 672 (8th Cir. 2011) (noting that providing a copy of a summons and complaint by mail “is not the equivalent of ‘delivering’ those documents as required by [Federal] Rule [of Civil Procedure] 4(j)(2)(A)”). The record does not indicate, and the plaintiff does not claim, that the defendant consented to service by mail. So service of process has not been made as required.

Because the plaintiff attempted service based on his misunderstanding of the law, this order extends the deadline for service. The order remands the case to the magistrate judge so that service can be effected by the clerk of court, *see* 28 U.S.C. § 1915(d) (stating that in *in forma pauperis* cases, “The officers of the court shall issue *and serve* all process”) (emphasis added), or through the United States Marshals Service or a designated process server, *see* Fed. R. Civ. P. 4(c)(3) (“At the plaintiff’s request, the court may order that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court” and “[t]he court must so order if the plaintiff is authorized to proceed in forma pauperis”), or by other appropriate means, *see, e.g.,* Fla. R. Civ. P. 1.070(i) (allowing service by mail when the defendant agrees to accept it).

For these reasons,

**IT IS ORDERED:**

The deadline for service of process is extended to May 21, 2014. The case is remanded to the magistrate judge for appropriate action on service of process.

SO ORDERED on April 21, 2014.

s/Robert L. Hinkle  
United States District Judge