

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

BRIAN FRANK GUERRY,

Plaintiff,

vs.

SCOTT FRAKES, Director; BRIAN
GAGE, Warden; GUIFFRE, Case
Worker; and THOMPSON, Case
Worker;

Defendants.

8:15CV323

MEMORANDUM AND ORDER

BRIAN FRANK GUERRY,

Plaintiff,

vs.

SCOTT FRAKES, in his individual
capacity; FRANK HOPKINS, in his
individual capacity; BRIAN GAGE, in
his individual capacity; et al.,

Defendants.

4:17CV3047

MEMORANDUM AND ORDER

In accordance with the court's Memorandum and Order dated June 8, 2017 ([Filing No. 80](#)), Mr. David A. Lopez has provided to the court the names and addresses for those defendants not yet served with Plaintiff Brian Frank Guerry's Complaint in Case No. 4:17CV3047. Accordingly,

1. In addition to those Defendants listed in the court’s Memorandum and Order dated May 24, 2017 ([Filing No. 76](#)), Guerry’s Eighth Amendment failure-to-protect and conditions-of-confinement claims may proceed against the following Defendants in their individual capacities for monetary damages: Paul Tompkins, Lucas A. Roede, Sonny Steele, Adam B. Cropp, and Sarah E. Glass.¹

2. For service of process on Defendant Paul Tompkins in his individual capacity, the clerk of the court is directed to complete a summons form and a USM-285 form for Defendant Tompkins using the address Nebraska State Penitentiary, 4201 South 14th Street, Lincoln, NE 68502, and forward them together with a copy of [Filing No. 1](#) in Case No. 4:17CV3047, a copy of [Filing No. 76](#) in Case No. 8:15CV323, and a copy of this Memorandum and Order to the Marshals Service. **The Marshals Service shall serve Defendant Tompkins personally in his individual capacity at the Nebraska State Penitentiary, 4201 South 14th Street, Lincoln, NE 68502.** Service may also be accomplished by using any of the following methods: residence, certified mail, or designated delivery service. *See* [Federal Rule of Civil Procedure 4\(e\)](#); [Neb. Rev. Stat. § 25-508.01 \(Reissue 2016\)](#).²

¹ Mr. Lopez identifies Chelsea Guiffre and Andrew King as part of the “John and Jane Does from Housing Units 2-A and B.” Because the Marshals Service already determined Guiffre’s address, the court has initiated service of process for her. The Marshals Service could not determine the proper address for Andrew King but, now that Mr. Lopez has identified his address, the court can initiate service of process for him.

² Pro se litigants proceeding in forma pauperis are entitled to rely on service by the United States Marshals Service. *Wright v. First Student, Inc.*, 710 F.3d 782, 783 (8th Cir. 2013). Pursuant to [28 U.S.C. § 1915\(d\)](#), in an in forma pauperis case, “[t]he officers of the court shall issue and serve all process, and perform all duties in such cases.” *See Moore v. Jackson*, 123 F.3d 1082, 1085 (8th Cir. 1997) (language in § 1915(d) is compulsory). *See, e.g., Beyer v. Pulaski County Jail*, 589 Fed. Appx. 798 (8th Cir. 2014) (unpublished) (vacating district court order of dismissal for failure to prosecute and directing district court to order the Marshal to seek defendant’s last-known contact information where plaintiff contended that the

3. For service of process on Defendants Lucas A. Roede and Adam B. Cropp in their individual capacities, the clerk of the court is directed to complete 2 summons forms and 2 USM-285 forms for Defendants Roede and Cropp using the address Tecumseh State Correctional Institution, 2725 N Hwy 50, Tecumseh, NE 68450, and forward them together with a copy of [Filing No. 1](#) in Case No. 4:17CV3047, a copy of [Filing No. 76](#) in Case No. 8:15CV323, and a copy of this Memorandum and Order to the Marshals Service. **The Marshals Service shall serve Defendants Roede and Cropp personally in their individual capacities at the Tecumseh State Correctional Institution, 2725 N Hwy 50, Tecumseh, NE 68450.** Service may also be accomplished by using any of the following methods: residence, certified mail, or designated delivery service. *See* [Federal Rule of Civil Procedure 4\(e\)](#); [Neb. Rev. Stat. § 25-508.01 \(Reissue 2016\)](#).

4. For service of process on Defendants Sonny Steele, Sarah E. Glass, and Andrew King in their individual capacities, the clerk of the court is directed to complete 3 summons forms and 3 USM-285 forms for Defendants Steele, Glass, and King using the addresses provided by Mr. Lopez in [Filing No. 81](#) in Case No. 8:15CV323 and forward them together with a copy of [Filing No. 1](#) in Case No. 4:17CV3047, a copy of [Filing No. 76](#) in Case No. 8:15CV323, and a copy of this Memorandum and Order to the Marshals Service for service of process on Defendants Steele, Glass, and King in their individual capacities. **The Marshals Service shall serve the defendant(s) in their individual capacities using any of the following methods: personal, residence, certified mail, or designated delivery service.** *See* [Federal Rule of Civil Procedure 4\(e\)](#); [Neb. Rev. Stat. § 25-508.01 \(Reissue 2016\)](#).

Jail would have information for defendant's whereabouts); [Graham v. Satkoski, 51 F.3d 710, 713 \(7th Cir. 1995\)](#) (when court instructs Marshal to serve papers for prisoner, prisoner need furnish no more than information necessary to identify defendant; Marshal should be able to ascertain defendant's current address).

5. The United States Marshal shall serve all process in this case without prepayment of fees from Plaintiff.

6. The clerk of the court is directed to file under seal any document containing the last-known personal addresses for Defendants Steele, Glass, and King.

7. The clerk of the court is directed to add Paul Tompkins, Lucas A. Roede, Sonny Steele, Adam B. Cropp, and Sarah E. Glass in their individual capacities as parties in Case No. 4:17CV3047, and to terminate “John Doe(s)” as a Defendant in the same.

8. The clerk of the court is directed to set the following pro se case management deadline: **October 9, 2017**: check for completion of service of process.

Dated this 10th day of July, 2017.

BY THE COURT:

s/ Richard G. Kopf
Senior United States District Judge