

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JOSHUA M. NICKMAN,

Plaintiff,

vs.

JUAN M. ZARRAGA, Individual Capacity;
SHELBY L. RAWLINGS, Individual
Capacity; ANDREW L. MCLEAN, Individual
Capacity; COLTON J. GUERRERO,
Individual Capacity; MICHAEL TUBBS,
Individual Capacity; JESUS J. RAMIREZ,
Individual Capacity; JAIME LYN CRAFT,
Individual Capacity; JESSICA M. STROUP,
Individual Capacity; SCOTT B. ANDREALA,
Individual Capacity; ERIC JON LITTLE,
Individual Capacity; JONATHAN R. TRIPP,
AND Individual Capacity; and AARON
GRAY, Individual Capacity;

Defendants.

8:16CV262

**MEMORANDUM
AND ORDER**

This matter is before the court on Plaintiff's Motions for Status. ([Filing No. 41](#); [Filing No. 45](#).) Plaintiff seeks information about whether Defendant Jonathan R. Tripp ("Tripp") has been served with process.

I. BACKGROUND

Plaintiff is in custody at the Nebraska State Penitentiary in Lincoln, Nebraska. He filed his Complaint ([Filing No. 1](#)) in this matter on June 13, 2016. He filed his Amended Complaint ([Filing No. 24](#)) on September 19, 2016.

The court conducted an initial review of the Amended Complaint in accordance with [28 U.S.C. § 1915\(e\)\(2\)](#) on October 12, 2016. ([Filing No. 25](#).) The court determined that the case could proceed to service of process as to Plaintiff's Eighth Amendment excessive force claims and state law claims against several Defendants in their individual capacities, including Tripp.

(*Id.*) The court ordered the Marshals Service to serve process on Defendants after Plaintiff informed the court that he did not know most of their addresses. (See [Filing No. 26 at CM/ECF p. 4](#); [Filing No. 27](#).)

On November 1, 2016, the clerk of the court issued summons on each Defendant in their individual capacity. ([Filing No. 31](#).) On November 9, 2016, the Marshals Service returned the summons for Tripp as unexecuted. ([Filing No. 33](#).) The Marshals Service sent the summons for Tripp via certified mail to Hall County Corrections in Grand Island, Nebraska. (*Id.*) It was returned as undeliverable because Tripp is not at that address. (*Id.*) As of the date of this order, all Defendants with the exception of Tripp have been served in their individual capacities. (See [Filing No. 44](#).)

II. DISCUSSION

The issue before the court is that Tripp has not been served with process. Plaintiff has informed the court that he does not know Tripp's address. (See [Filing No. 26 at CM/ECF p. 4](#).)

Plaintiff, who is proceeding *in forma pauperis* in this matter, is 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). So long as the plaintiff has provided the necessary information, the Marshals Service's failure to effect service is automatically good cause within the meaning of Rule 4(m) of the Federal Rules of Civil Procedure for failing to serve process. *Moore*, 123 F.3d at 1085-86; *Gonzalez v. L'Oreal USA, Inc.*, 489 F. Supp. 2d 181, 184 (N.D.N.Y. 2007). See *Beyer v. Pulaski County Jail*, 589 Fed. Appx. 798, 799 (8th Cir. 2014) (quoting *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)).

Here, the court ordered Plaintiff to serve Defendants, including Tripp, with process by February 9, 2017. ([Filing No. 25 at CM/ECF p. 5](#).) On October 26, 2016, the court directed the clerk of the court to complete the summons forms and issue them for service on Defendants in their individual capacities. ([Filing No. 27 at CM/ECF p. 2](#).) On November 1, 2016, the clerk of

the court issued the summons. ([Filing No. 31.](#)) On November 9, 2016, the Marshals Service returned the summons for Tripp as unexecuted. ([Filing No. 33.](#)) The Marshals Service sent the summons for Tripp via certified mail to Hall County Corrections in Grand Island, Nebraska. (*Id.*) It was returned as undeliverable because Tripp is not at that address. (*Id.*) The court will, once again, direct the clerk of the court to issue the summons form and forward it to the Marshals Service for service of process on Tripp in his individual capacity.

IT IS ORDERED that:

1. The clerk of the court is directed to obtain a current address for Defendant Jonathan R. Tripp from the United States Marshals Service for service of process on him in his individual capacity.
2. Upon obtaining the necessary address, the clerk of the court is directed to complete and issue a summons for Defendant Jonathan R. Tripp in his individual capacity at the address provided by the Marshals Service. The clerk of the court is further directed to deliver the summons, the necessary USM-285 Form, the Amended Complaint ([Filing No. 24](#)), a copy of this order, and a copy of the order granting Plaintiff's motion for leave to proceed in forma pauperis ([Filing No. 6](#)) to the Marshals Service for service of process on Defendant Jonathan R. Tripp.
3. The clerk of the court is directed to file under seal any document containing the current address for Defendant Jonathan R. Tripp.
4. The clerk of the court is ordered to terminate the Plaintiff's Motions for Status: Filing No. 41 and Filing No. 45.

Dated this 12th day of January, 2017.

BY THE COURT:

s/ Richard G. Kopf
Senior United States District Judge