

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

MESSAN AMETITTOVI,

Plaintiff,

vs.

OMAHA AREA HEALTH EDUCATIONAL  
CENTER, INC., and DOES 1-10

Defendants.

**8:19CV181**

**FINDINGS AND  
RECOMMENDATION**

Plaintiff filed the Complaint on April 24, 2019. ([Filing No. 1](#)). On April 25, 2019, the Court granted Plaintiff's Motion for Leave to Proceed in forma pauperis ([Filing No. 5](#)). The clerk issued Plaintiff's only requested summons for "Lizabeth Arellano (Registered Agent)" on the same date ([Filing No. 6](#)). Based on the record before the Court, it appeared that Plaintiff failed to serve the named defendant with notice of this lawsuit, so on August 13, 2019, the undersigned magistrate judge issued a show cause order requiring Plaintiff to show cause why this case should not be dismissed pursuant to Federal Rule of Civil Procedure 4(m) for failure to serve the defendant within 90-days of filing the Complaint. (Filing No. 9). The show cause order warned Plaintiff that failure to timely comply with the order may result in dismissal of the action without further notice. The deadline for responding to the show cause order was August 27, 2019.

On August 26, 2019, Plaintiff filed three documents, which the Court construes as Plaintiff's response to the show cause order: two unsigned certified mail receipts directed to Lizabeth Arellano returned to sender and unable to forward, which Plaintiff filed as "Waivers of Service Returned Unexecuted," (Filing No. 8; Filing No. 9), and a signed certified mail receipt addressed to "Errik Ejike, Sup. Program Multicultural and Comm. Affairs at Creighton University," which Plaintiff filed as a "Waiver of Service returned executed upon defendant Omaha Area Health Educational Center, Inc." (Filing No. 10).

None of Plaintiff's documents are sufficient to show service of process on the named defendant and there remains no indication that the named defendant was served and received notice of this lawsuit. Plaintiff did not request an extension of the service deadline or otherwise offer the Court any explanation as to why the named defendant was not served, despite being providing with an opportunity to do so in the Court's show cause order. Plaintiff was responsible for having

the summons and complaint served within the time allowed by Rule 4(m), and failed to do so in this case. Accordingly,

**IT IS HEREBY RECOMMENDED** to Robert F. Rossiter, Jr., United States District Court Judge, that the above-captioned case be dismissed for failure of service pursuant to Federal Rule of Civil Procedure 4(m).

Dated this 4<sup>th</sup> day of September, 2019.

BY THE COURT:

s/ Michael D. Nelson  
United States Magistrate Judge

**ADMONITION**

A party may object to a magistrate judge's findings and recommendation by filing an objection within fourteen (14) days after being served with a copy of the findings and recommendation. NECivR 72.2. Failure to timely object may constitute a waiver of any objection.