

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

VICTOR GARCIA,

Plaintiff,

v.

CV No. 20-601 GJF/CG

ALBERT SENA, et al.,

Defendants.

**ORDER QUASHING PLAINTIFF'S SUMMONS
AS TO DEFENDANTS JOHN DOE 1 AND OFFICER SANTINO**

THIS MATTER is before the Court on Defendants John Doe 1 and Officer Santino's Special Entry of Appearance and Motion to Quash Summons (the "Motion"), (Doc. 18), filed October 13, 2020; *Plaintiff's Response to Defendant's Special Entry of Appearance and Motion to Quash Summons* (the "Response"), (Doc. 23), filed October 21, 2020; and Defendants John Doe 1 and Officer Santino's Reply in Support of Motion to Quash, (Doc. 24), filed October 26, 2020. The Court, having reviewed the Motion, the Response, the Reply, and noting the Motion is stipulated, finds the Motion is well-taken and will grant the Motion as set forth below.

In the Motion, Defendants John Doe 1 and Officer Santino ask the Court to quash Plaintiff's summons, arguing that Plaintiff (1) failed to timely serve Defendants John Doe 1 and Officer Santino, (2) improperly served them at their place of employment, and (3) in any event cannot serve unknown defendants. (Doc. 18 at 2). Defendants John Doe 1 and Officer Santino further ask the Court to deny Plaintiff any additional time to properly serve the summons and complaint, and to deny Plaintiff leave to amend the complaint, contending that no amendment will render the summons and

complaint proper. *Id.* at 4-6; see also (Doc. 24 at 3-4). In his Response, Plaintiff stipulates to the Motion, and further asks the Court to grant him leave to amend the complaint. (Doc. 23 at 7).

Since the parties agree that the summons should be quashed as to Defendants John Doe 1 and Officer Santino, the Court will grant the Motion. However, the Court will not address Plaintiff's request to amend his complaint, (Doc. 23 at 5-7), or Defendants John Doe 1 and Officer Santino's argument against such amendment as barred by the statute of limitations, (Doc. 18 at 4-6); (Doc 24 at 3-4). Insofar as Plaintiff requests leave to amend his complaint and Defendants John Doe 1 and Officer Santino oppose such leave, Plaintiff is instructed to file a formal motion on the record for consideration by the presiding judge.

IT IS THEREFORE ORDERED that Defendants John Doe 1 and Officer Santino's Special Entry of Appearance and Motion to Quash Summons, (Doc. 18), is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiff shall have until **December 13, 2020**, to properly serve Defendants John Doe 1 and Officer Santino, consistent with the Court's previous *Order Extending Plaintiff's Time to Serve Summons and Complaint*, (Doc. 6), and *Second Order Extending Plaintiff's Time to Serve Summons and Complaint*, (Doc. 20). See FED. R. CIV. P. 4(m); see also *Khalsa v. U.S. Bank, N.A.*, No. 1:15-cv-1010 WJ/KBM, 2016 WL 8914538, *4 (D.N.M. Apr. 6, 2016) (quashing plaintiff's summons and granting plaintiff sixty days to perfect service).

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'Carmen E. Garza', with a long horizontal line extending to the right.

THE HONORABLE CARMEN E. GARZA
CHIEF UNITED STATES MAGISTRATE JUDGE