

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

RAYMOND WILLIAM SCHMAL,

Plaintiff,

v.

Civ. No. 20-1324 CG/GJF

LUNA COUNTY, et al.,

Defendants.

SECOND ORDER FOR SERVICE

THIS MATTER is before the Court on pro se Plaintiff's "Motion to Request Officers of the Court to Serve a Copy of Plaintiff's Summons and Complaint on the Defendants" [ECF 21] ("Motion").

Plaintiff is proceeding *in forma pauperis* pursuant to 28 U.S.C. § 1915. This statute provides that the "officers of the court shall issue and serve all process ... in such cases." § 1915(d). The Court orders service of the summons and Complaint on Defendants Foster, McCoy and Reitz at the addresses¹ provided by Plaintiff pursuant to Rule 4(e), which provides:

Unless federal law provides otherwise, an individual--other than a minor, an incompetent person, or a person whose waiver has been filed--may be served in a judicial district of the United States by:

- (1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or
- (2) doing any of the following:
 - (A) delivering a copy of the summons and of the complaint to the individual personally;

¹ Plaintiff states he does not know the home addresses of Defendants Foster, McCoy or Reitz and that Defendants Foster, McCoy and Reitz are agents, owners, or employees of the entities whose addresses Plaintiff provides for each Defendant. See ECF 21 at 2.

(B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or

(C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

Fed. R. Civ. P. 4(e). New Mexico state law for serving process states:

E. Process; how served; generally.

(1) Process shall be served in a manner reasonably calculated, under all the circumstances, to apprise the defendant of the existence and pendency of the action and to afford a reasonable opportunity to appear and defend.

(2) Service may be made, subject to the restrictions and requirements of this rule, by the methods authorized by this rule or in the manner provided for by any applicable statute, to the extent that the statute does not conflict with this rule.

(3) Service may be made by mail or commercial courier service provided that the envelope is addressed to the named defendant and further provided that the defendant or a person authorized by appointment, by law or by this rule to accept service of process upon the defendant signs a receipt for the envelope or package containing the summons and complaint, writ or other process. Service by mail or commercial courier service shall be complete on the date the receipt is signed as provided by this subparagraph. For purposes of this rule “signs” includes the electronic representation of a signature.

F. Process; personal service upon an individual. Personal service of process shall be made upon an individual by delivering a copy of a summons and complaint or other process:

(1)(a) to the individual personally; or if the individual refuses to accept service, by leaving the process at the location where the individual has been found; and if the individual refuses to receive such copies or permit them to be left, such action shall constitute valid service; or

(b) by mail or commercial courier service as provided in Subparagraph (3) of Paragraph E of this rule.

(2) If, after the plaintiff attempts service of process by either of the methods of service provided by Subparagraph (1) of this paragraph, the defendant has not signed for or accepted service, service may be made by delivering a copy of the process to some person residing at the usual place of abode of

the defendant who is over the age of fifteen (15) years and mailing by first class mail to the defendant at the defendant's last known mailing address a copy of the process; or

(3) If service is not accomplished in accordance with Subparagraphs (1) and (2), then service of process may be made by delivering a copy of the process at the actual place of business or employment of the defendant to the person apparently in charge thereof and by mailing a copy of the summons and complaint by first class mail to the defendant at the defendant's last known mailing address and at the defendant's actual place of business or employment.

N.M.R.A. 1-0004(E-F).

The Court notes that Defendants McCoy and Reitz recently filed (along with Defendant Deming Animal Guardians) a “Motion to Dismiss Plaintiff’s Original Complaint for Failure to State a Claim Pursuant to Fed. R. Civ. P. 12(b)(6)” [ECF 22]. This motion does not expressly address service of process (e.g., by alleging “insufficient service of process,” Fed. R. Civ. P. 12(b)(5), or expressly waiving such service). *See* ECF 22 at 1-9; *see also* *FDIC v. Oaklawn Apartments*, 959 F.2d 170, 173 (10th Cir. 1992) (observing that “[i]f a party files a pre-answer motion and fails to assert the defenses of lack of personal jurisdiction or insufficiency of service, he waives these defenses”). Furthermore, because “Defendants do not intend to waive *any* affirmative defenses” and may “assert ... additional affirmative defenses at a later date,” ECF 22 at 1 n.1 (emphasis added), the Court will still require service of process on Defendants McCoy and Reitz.

IT IS THEREFORE ORDERED that Plaintiff’s Motion is **GRANTED** in that the Clerk of the Court shall provide a copy of this Order [ECF 24], a summons, and a copy of Plaintiff’s Complaint [ECF 1] to the United States Marshals Service. The United States Marshals Service shall serve a copy of this Order, a summons and a copy of Plaintiff’s Complaint on the following persons:

Sandy Foster
Luna County Animal Control Shelter
2135 Onate Ave.
Deming, New Mexico 88030

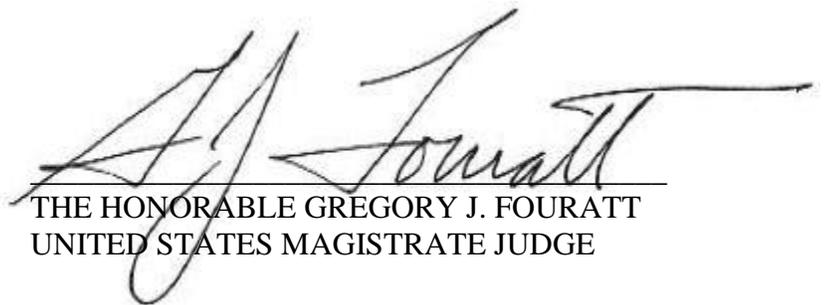
Tammy McCoy
Sunshine Groomers
1755 Domingo Rd. SW
Deming, New Mexico 88030

Tammy McCoy
Deming Animal Guardians
2117 Columbus Rd. SE
Deming, New Mexico 88030

Mike Reitz
Sunshine Groomers
1755 Domingo Rd SW
Deming, New Mexico 88030

Mike Reitz
Deming Animal Guardians
2117 Columbus Rd SE
Deming, New Mexico 88030

SO ORDERED.



THE HONORABLE GREGORY J. FOURATT
UNITED STATES MAGISTRATE JUDGE