

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**USDC-SDNY
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DATE FILED: 01/11/2022**

ALROY RICHARDS,

Plaintiff,

v.

CITY OF NEW YORK, et al.,

Defendants.

20-CV-3348 (RA)

ORDER

RONNIE ABRAMS, United States District Judge:

On December 14, 2021, *pro se* Plaintiff filed the Third Amended Complaint in this action, which named four Defendants: the City of New York, Scott Stringer in his official capacity as Comptroller of the City of New York, NYPD Officer D. Saroff, and NYPD Officer John Pastoriza. On December 28, 2021, Plaintiff filed affidavits of service indicating that each of these Defendants had been served on December 20, 2021. Although the City of New York has since responded to the Third Amended Complaint via a letter motion, individual Defendants Saroff and Pastoriza have not appeared or responded to the Third Amended Complaint.

The Court observes, however, that service on these two Defendants appears to have been defective. The affidavits of service state that these individuals were served by mailing a copy of the summons and complaint to their places of work by first-class mail. Dkts. 62, 64. New York law provides, however, that an individual may be served “*by delivering the summons within the state to a person of suitable age and discretion at the actual place of business . . . of the person to be served and by . . . mailing the summons by first class mail to the person to be served at his or her actual place of business,*” and requires “such delivery and mailing to be effected within twenty days of each other.” N.Y. C.P.L.R. § 308(2) (emphasis added). Because Plaintiff did not appear to deliver the summonses

to a person of suitable age and discretion at either Saroff's or Pastoriza's actual places of business, his service on these individuals appears to be defective.

Plaintiff is directed to serve these individuals in accordance with Federal Rule of Civil Procedure 4 and New York state law. If he does not do so within 90 days of having filed the Third Amended Complaint, his action as against these Defendants may be dismissed pursuant to Rule 4.

The Court further observes that the City of New York's letter motion of January 3, 2022, requests that the Court dismiss the Third Amended Complaint "on behalf of all named individuals." By no later than January 18, 2022, the City shall clarify whether it intends to appear in this case and respond to the Third Amended Complaint on behalf of Officers Saroff and Pastoriza, assuming that these individuals are properly served, and/or waive service.

The Clerk of Court is respectfully directed to mail a copy of this Order to Plaintiff.

SO ORDERED.

Dated: January 11, 2022
New York, New York



RONNIE ABRAMS
United States District Judge