

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SAMUEL J. SMOLEN, JR.,

Plaintiff,

-against-

C.O. M. WESLEY, et al.,

Defendants.

ORDER OF SERVICE

16-CV-02417 (PMH)

PHILIP M. HALPERN, United States District Judge:

Plaintiff, currently incarcerated at Sullivan Correctional Facility, brings this *pro se* action under 42 U.S.C. § 1983 and state law, alleging that Defendants violated his rights while he was incarcerated at Green Haven Correctional Facility. By order dated April 4, 2016, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis*. (Doc. 4). On June 2, 2020, I ordered that counsel for the represented Defendants provide the addresses for Defendants Hobson, Scharfenburg, Dunn, and Empire State Ambulance. Defendants Scharfenburg and Dunn were served with Plaintiff's Complaint, (*see* Docs. 66 and 67) but were never served with Plaintiff's Amended Complaint. Defendants Scharfenburg and Dunn have not appeared in this action. Defendants Hobson and Empire State Ambulance were never served with Plaintiff's Complaint or Amended Complaint. By letter dated June 16, 2020 counsel for the represented Defendants provided addresses for the aforementioned unserved Defendants. (Docs. 124 and 125).

Because Plaintiff has been granted permission to proceed *in forma pauperis* (IFP), he is entitled to rely on the Court and the U.S. Marshals Service to effect service. *Walker v. Schult*, 717 F.3d. 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all process . . . in [IFP] cases."); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)).

Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that the summons and complaint be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and, as to Defendants Scharfenburg and Dunn, service of the Amended Complaint on these Defendants was not previously ordered, (*see* Doc. 77), and as to Defendants Hobson and Empire State Ambulance, Plaintiff was not previously provided an accurate address for these Defendants. The Court therefore extends the time to serve these four Defendants with Plaintiff's Amended Complaint until 90 days after the date the summons is issued. If the complaint is not served within that time, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff's responsibility to request an extension of time for service); *see also Murray v. Pataki*, 378 F. App'x 50, 52 (2d Cir. 2010) ("As long as the [plaintiff proceeding IFP] provides the information necessary to identify the defendant, the Marshals' failure to effect service automatically constitutes 'good cause' for an extension of time within the meaning of Rule 4(m).").

To allow Plaintiff to effect service on Defendants Hobson and Empire State Ambulance through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form ("USM-285 form") for each of these defendants. The Clerk of Court is further instructed to issue summonses and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon these defendants.

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

CONCLUSION

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

The Clerk of Court is further instructed to deliver to the U.S. Marshals Service all documents necessary to effect service on Defendants Hobson and Empire State Ambulance.

The Clerk of Court is also instructed to mail a copy of the amended complaint to Scharfenburg and Dunn, with an address to be provided.¹

SO ORDERED:

Dated: New York, New York
June 17, 2020



PHILIP M. HALPERN
United States District Judge

¹ The Court will provide Scharfenburg's and Dunn's addresses to the Clerk's Office.

DEFENDANTS AND SERVICE ADDRESSES

1. Gregory Scharfenburg
Address to be provided to the Clerk's Office
2. Heather Dunn
Address to be provided to the Clerk's Office
3. Donald Hobson
Marcy Correctional Facility
9000 Old River Rd.
Marcy, NY 13403
4. Empire State Ambulance
10 South White St.
Poughkeepsie, NY 12601