

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:16-cv-151-FDW**

<b>ALFONZO CABALLERO,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b><u>ORDER</u></b>
	)	
<b>PHILLIP BONEY, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	
_____	)	

**THIS MATTER** is before the Court on the North Carolina Department of Public Safety’s (“NC PDS”) Sealed Notice, (Doc. No. 22), informing the Court that it has been unable to procure a waiver of service of process for Defendants Phillip Boney, Stephen Heh, and FNU Smith in accordance with the Court’s May 23, 2018, Order, (Doc. No. 15). NC DPS has provided the last known addresses for Defendants Boney and Heh under seal. (Doc. No. 22).

The Clerk of Court is directed to notify the United States Marshal that Defendants Boney and Heh need to be served with the summons and Complaint in accordance with Rule 4 the Federal Rules of Civil Procedure. If Defendants Boney and Heh cannot be served at the addresses provided by the NC DPS, the U.S. Marshal shall be responsible for locating their home addresses so that they may be served. See 28 U.S.C. § 1915(d) (in actions brought *in forma pauperis* under § 1915(d), “[t]he officers of the court shall issue and serve all process, and perform all duties in such cases”); Fed. R. Civ. P. 4(c)(3) (“At the plaintiff’s request, the court may order that service be made by a United States Marshal or deputy marshal or by a person specially appointed by the court. The court must so order if the plaintiff is authorized to proceed in forma pauperis under 28 U.S.C. § 1915....”). If the U.S. Marshal is unable to obtain service on Defendants Boney and Heh,

the U.S. Marshal shall inform the Court of the reasonable attempts to obtain service. The U.S. Marshal shall not disclose Defendants' home addresses to the *pro se* incarcerated Plaintiff and shall file any document containing such addresses under seal.


With regards to FNU Smith, NC DPS has been unable to determine which individual with the last name of Smith that Plaintiff wishes to sue. Plaintiff is instructed to file a Notice within **ten (10) days** of this Order providing any and all information about FNU Smith to assist NC DPS to identify the individual against whom Plaintiff intends to proceed. Plaintiff is cautioned that failure to comply may result in dismissal of the claims against FNU Smith. Within **14 (fourteen) days** after Plaintiff's Notice is filed, NC DPS shall file a Waiver of Service or a Notice pursuant to LCvR 4.3 for FNU Smith.

**IT IS THEREFORE ORDERED that:**

- (1) The U.S. Marshal shall use all reasonable efforts to locate and obtain service on Defendants **Boney** and **Heh** at their home addresses. If the U.S. Marshal is unable to obtain service on Defendants Boney and Heh, the U.S. Marshal shall inform the Court of the reasonable attempts to obtain service.
- (2) The Clerk is respectfully instructed to mail a copy of the Complaint, (Doc. No. 1), the Sealed Notice containing Defendants' last known addresses, (Doc. No. 22), and this Order to the U.S. Marshal.
- (3) Plaintiff is instructed to file a Notice within **ten (10) days** of this Order providing any and all information about **FNU Smith** to assist NC DPS to identify the individual against whom Plaintiff intends to proceed. Plaintiff is cautioned that failure to provide this information may result in dismissal of the claims against FNU Smith.

- (4) NC DPS shall file, within **14 (fourteen) days** of Plaintiff's Notice, a Waiver of Service or a Notice pursuant to LCvR 4.3(c)(2) for Defendant **FNU Smith**.

Signed: September 28, 2018

  
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Frank D. Whitney  
Chief United States District Judge

