

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:18-cv-188-FDW**

JAMES C. McNEILL,)
)
 Plaintiff,)
)
 vs.)
)
 MARQUHNE BENJAMIN JOHNSON, et al.,)
)
 Defendants.)
 _____)

ORDER

THIS MATTER is before the Court on periodic status review of the file.

Plaintiff filed this action pursuant to 42 U.S.C. § 1983 and the Complaint passed initial review against Defendants including Marquhne Benjamin Johnson. (Doc. No. 10). The North Carolina Department of Public Safety (“NCDPS”) was unable to procure service waiver for Defendant Johnson but provided his full name and last known address. (Doc. No. 15). The United States Marshal was unable to serve Defendant Johnson, stating “Def moved ... No forwarding info left. No employment updates or changes in DMV. Unable to locate Defendant.” See (Doc. No. 22).


Rule 4(m) of the Federal Rules of Civil Procedure allows a court to dismiss *sua sponte* unserved defendants after 90 days following the filing of the complaint. Fed. R. Civ. P. 4(m); see also Fed. R. Civ. P. 6(b)(1)(B) (when an act must be done within a specified time, a court may, for good cause, extend that time on motion made after the time has expired if the party failed to act because of excusable neglect).

The Complaint in the instant case was signed on April 7, 2018 and docketed on April 12, 2018. (Doc. No. 1). More than 90 days have expired and Defendant Johnson has not been served.

Plaintiff is Ordered to file a Response within **fourteen (14) days** of this Order showing cause why Defendant Johnson should not be dismissed from this action. Plaintiff is cautioned that failure to comply with this Order will likely result in the dismissal of this case without prejudice and without further notice as to Defendant Johnson.

IT IS THEREFORE ORDERED that Plaintiff shall, within **fourteen (14) days** of this Order, file a Response showing cause why Defendant Johnson should not be dismissed from this action. Failure to comply with this Order will probably result in dismissal of Defendant Johnson from this action without prejudice.

Signed: December 21, 2018



Frank D. Whitney
Chief United States District Judge 