

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

KENT E. HOVIND,
PAUL JOHN HANSEN,
Trustee for Creation Science Evangelism,

Plaintiffs,

v.

Case No. 3:20cv5484-TKW-HTC

UNITED STATES OF AMERICA, et al.,

Defendants.

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ORDER

This matter is before the Court upon the clerk's receipt of six (6) copies of the first page of Plaintiffs' "amended complaint"; three (3) summonses, and a document titled "Praeipie." ECF Doc. 5. In the Praeipie, Plaintiffs ask the clerk to "remove page one of each of the complaints and replace it with this amended page." ECF Doc. 5 at 15. To the extent Plaintiffs wish to file an amended complaint, what they have submitted is insufficient. It is not the clerk's job to replace the first page of the initial complaint with the first page of the "amended complaint" for purposes of compiling a complete amended complaint for the Plaintiffs. **Instead, Plaintiffs must submit a full and complete amended complaint and can do so utilizing this Court's civil complaint form for non-prisoner litigants.**

Also, in the “Praecipe,” Plaintiffs ask the clerk to forward the enclosed summonses to the United States Marshals Service (“USMS”) for service and notify the Court that an additional three (3) summonses will be submitted shortly. As the Court explained in its June 4, 2020 Order, it is Plaintiffs’ responsibility to serve a copy of their amended complaint and a summons on each named Defendant in the manner prescribed by Federal Rule of Civil Procedure 4. ECF Doc. 4. Although Rule 4(c)(3) provides that the Court *may* order that service be made by a United States marshal or a deputy marshal, Plaintiffs are not entitled to rely on service by the USMS. *See* Rule 4(c)(3). Plaintiffs would only be entitled to rely on such service if they were proceeding *in forma pauperis*, which they are not. *See* Rule 4(c)(3) (upon request by the plaintiff, the Court “must . . . order [that service be made by the USMS] if the plaintiff is authorized to proceed in forma pauperis under 28 U.S.C. § 1915 or as a seaman under 28 U.S.C. § 1916”); *see also Ezzard v. Ajibade*, 2015 WL 1880293, at *5 (S.D. Ga. Apr. 24, 2015) (“Second, and more importantly, the fact that Plaintiff is not proceeding *in forma pauperis* also means that Plaintiff has the responsibility of serving Defendants and may not rely on the Marshals to do so. As the Court clearly stated in three Orders regarding service in this case, Plaintiff must comply with Rule 4”).

Plaintiffs have not shown why service by the USMS is necessary or required in this case. *See Telford v. Dep’t. of Housing and Urban Dev.*, 2016 WL 7176583, at *2 (D. S.D. Dec. 8, 2016) (“Plaintiffs have previously applied to proceed in forma

pauperis in this case, but this Court denied that application. Therefore, this Court is under no obligation to order the U.S. Marshals to complete the process service. Plaintiffs have provided no additional reasons for this Court to believe ordered service by U.S. Marshals is required”). Moreover, at this point in the proceedings, Plaintiffs cannot make such a showing since they have made no other efforts to serve Defendants. Additionally, although Plaintiffs state they will contact the USMS to make payment arrangements, there is no indication to the Court that such arrangements have been made, and service by the USMS is not inexpensive. Thus, to the extent that Plaintiffs’ “Praecipe” seeks an order from the Court requiring service by the USMS, such request is DENIED.

Accordingly, it is ORDERED that:

1. The clerk shall return all service copies of Plaintiffs’ complaint and first page of the amended complaint to the Plaintiffs.
2. The clerk shall send Plaintiffs a civil complaint form for use by non-prisoners. This case number shall be written on the form and the form will be entitled “Amended Complaint.”
3. Within **fourteen (14) days** of the date of this order, Plaintiffs shall file one (1) copy of a complete amended complaint.
4. Upon receipt of the complete amended complaint, the clerk shall issue the summonses submitted by the Plaintiffs, which are properly completed. If the

amended complaint is deficient or missing any pages, the clerk will refer the matter back to the undersigned.

5. Plaintiffs are reminded that they must complete service on each Defendant within ninety (90) days of the date they filed the complaint or, absent good cause, the Court must dismiss their claims as to any unserved Defendant. *See* Fed. R. Civ. P. 4(m).

6. Plaintiffs' failure to timely comply with this order may result in a recommendation that this case be dismissed for failure to prosecute and comply with an order of the Court.

DONE AND ORDERED this 26th day of June, 2020.

/s/ Hope Thai Cannon

HOPE THAI CANNON
UNITED STATES MAGISTRATE JUDGE