

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

JAMES DARYL WEST,

Plaintiff,

v.

Case No: 2:16-cv-694-FtM-38CM

RONALD HEMPHILL, CARMELLO  
BERRIOS, KAREN BLANKENSHIP,  
H. WETTERER, BONNIE LAROSA,  
ROBERT GILBREATH, FNU  
SCHULTZ, DIANN SPRATT, JULIE  
JONES, WEXFORD HEALTH  
SOURCES, KATHY CONNER, K.  
WILLIAMS and JAMES LICATA,

Defendants.

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**OPINION AND ORDER**<sup>1</sup>

Before the Court is Defendants Blakenship and Larosa's Motion to Dismiss Amended Complaint ([Doc. 104](#)). Defendants seek dismissal of Plaintiff's Amended Complaint ([Doc. 21](#)) filed on May 15, 2017, pursuant to [Fed. R. Civ. P. 4](#) (m). Defendants aver they are entitled to dismissal of the Amended Complaint because service of process was not effectuated upon Defendants Blankenship and Larosa until May 21, 2018 ([Doc. 88](#)) and May 24, 2018, respectively, well beyond the 90-day period set forth in Rule 4(m).

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Because Plaintiff is incarcerated and proceeding *in forma pauperis* on his Amended Complaint filed pursuant to 42 U.S.C. § 1983, the Court must “issue and serve all process.” 28 U.S.C. § 1915(d); see also Fed. R. Civ. P. 4(c)(3). In the instant case, Plaintiff completed corrected service forms as directed by Court in its February 12, 2018 Order. See Doc. 48. Thereafter, the Court directed service upon the Defendants on May 16, 2018. See Doc. 54. There is nothing in the record to indicate that *pro se* Plaintiff was responsible for any delay in effectuating service in this matter. *Richardson v. Johnson*, 598 F. 3d 734, 739-40 (11th Cir. 2010) (reversing the district court’s dismissal of complaint under Rule 4(m) on basis that *pro se* incarcerated plaintiff was not at fault for delay in service). Indeed, “the failure of the United States Marshal to effectuate service on behalf of an *in forma pauperis* plaintiff through no fault of that plaintiff constitutes ‘good cause’ for the plaintiff’s failure to effect timely service within the meaning of Rule 4(m).” *Allen v. Carey*, 626 F. App’x 852, 853 (11th Cir. 2015) (quoting *Rance v. Rocksolid Granit USA, Inc.*, 583 F.3d 1284, 1288 (11th Cir. 2009)).

Accordingly, it is now

**ORDERED:**

Defendants Blankenship and Larosa’s Motion to Dismiss Amended Complaint (Doc. 104) is **DENIED** and Defendants shall file an answer to Plaintiff’s Amended Complaint within twenty (20) days of the date of this Order.

**DONE** and **ORDERED** in Fort Myers, Florida this 30th day of October 2018.

  
SHERI POLSTER CHAPPELL  
UNITED STATES DISTRICT JUDGE

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Copies: All Parties of Record