

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 18-cv-03112-RBJ-STV

SEAN SLATTON,

Plaintiff,

v.

TODD HOPKINS,
BRANDON BARNES,
JOHN HUTTO, and
FORT COLLINS POLICE DEPARTMENT,

Defendants.

ORDER

Magistrate Judge Scott T. Varholak

This civil action is before the Court on Plaintiff's "Request for Courts to Serve Defendants and Send Submitted Documents on Behalf of Plaintiff (the "Motion") [#13], which was referred to this Court [#15]. This Court has carefully considered the Motion and related briefing, the entire case file, and the applicable case law, and has determined that oral argument would not materially assist in the disposition of the Motion. For the following reasons, the Motion is **DENIED**.

On December 3, 2018, Plaintiff, proceeding pro se,¹ filed the instant action against Defendants and paid the full amount of the required filing fee. [#1] On January 11, 2019,

¹ "A pro se litigant's pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers." *Hall v. Bellmon*, 935 F.2d 1106, at 1110 (10th Cir. 1991) (citing *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972)). "The *Haines* rule applies to all proceedings involving a pro se litigant." *Id.* at 1110 n.3. The court, however, cannot be a pro se litigant's advocate. See *Yang v. Archuleta*, 525 F.3d 925, 927 n.1 (10th Cir. 2008).

Plaintiff filed an Amended Complaint—the operative complaint in this matter—asserting claims pursuant to 42 U.S.C. § 1983 against Defendants for false arrest, excessive force, and false imprisonment. [#7] Today, April 3, 2019, the Court conducted a Scheduling Conference, but Plaintiff has not yet served any of the named Defendants and none has yet entered an appearance. [#14] The Court thus did not enter a scheduling order and, instead, set the matter for a status conference on May 3, 2019. [*Id.*]

Plaintiff filed the instant Motion on April 2, 2019, but it was not docketed until after the Court had concluded the Scheduling Conference. In the Motion, Plaintiff contends that he “does not have the addresses nor any contact info[rmation] for any of the Defendants” and “does not have any feasible way of obtaining the addresses.” [#13] The Motion thus requests that “the Alfred A. Arraj United States Courthouse to send court documents on behalf of the pro se Plaintiff.” [*Id.*] The Court understands Plaintiff to request that the Court effect service on his behalf.

Although a pro se plaintiff proceeding in forma pauperis is entitled to rely upon the Clerk of Court and/or United States Marshals Service (“USMS”) to serve the summons and complaint,² Plaintiff here paid the filing fee and is not proceeding in forma pauperis.³

² See *Locke v. FedEx Freight, Inc.*, No. 12-CV-00708-REB-MEH, 2012 WL 7783085, at *12 (D. Colo. Aug. 31, 2012), *report and recommendation adopted*, 2013 WL 1163974 (D. Colo. Mar. 21, 2013).

³ Nor may Plaintiff now seek leave to proceed in forma pauperis. The Tenth Circuit has “uniformly held that payment of filing fees causes requests to proceed IFP to become moot.” *Burgess v. Daniels*, 578 F. App’x 747, 751 (10th Cir. 2014) (collecting cases); see also *Golden v. Kaiser*, 1 F. App’x 841, 841 n.1 (10th Cir. 2001) (denying as moot appellant’s request for refund of previously paid filing fee and to be allowed to proceed IFP, noting that the appellant “ha[d] not identified any precedent supporting such a request and th[e] court ha[d] not discovered any”); *Jones v. Richardson*, No. 08-3195-RDR, 2010 WL 618132, at *1 (D. Kan. Feb. 19, 2010) (“The court need not determine whether plaintiff has filed a motion supported by sufficient financial information because both motions for leave to proceed [IFP] were rendered moot by his payment of the filing fee.”).

Pursuant to Federal Rule of Civil Procedure 4(c)(3), “[a]t 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.” (emphasis added). Accordingly, where, as here, Plaintiff is not proceeding IFP, “the decision whether to order the U.S. Marshal to serve the Summons and Complaint is left to the sound discretion of the Court.” *York v. Fed. Bureau Of Prisons*, No. 07-cv-01297-EWN-KLM, 2008 WL 2410416, at *2 n.1 (D. Colo. June 11, 2008). A plaintiff requesting an order of service must “justify entry of an Order requiring the Marshal’s Service to serve . . . defendants,” and “court orders directing service by marshal should not be issued unless they are *really* necessary.” *Id.* at *2 (second quoting Advisory Committee Notes for Fed. R. Civ. P. 4, 93 F.R.D. 255, 262 (1981)). A plaintiff is responsible “to first ‘seek service by private means whenever feasible rather than impose the burden on the Marshal’s Service.’” *Id.* (quoting 93 F.R.D. at 262). Even if the court orders the USMS to effect service, the non-IFP plaintiff “is responsible for payment of the cost of service, including any reasonable steps taken by USMS to locate the defendants for the purpose of effecting service of summons.” *Bloom v. McPherson*, No. 07-3258-SAC, 2010 WL 2025228, at *2 (D. Kan. May 20, 2010).

Here, Plaintiff has failed to demonstrate the requisite necessity of service by the USMS. Plaintiff does not explain why the services or a private process server would be inadequate or why he is unable to engage such services. Although Plaintiff contends that he has no “feasible way of obtaining [Defendants’] addresses,” he does not explain why the addresses provided for Defendants in the Amended Complaint are insufficient for service or describe any efforts he has undertaken to try to identify valid addresses for service. Moreover, even if the Court were to order service by the USMS, “[i]t is the

plaintiff's responsibility to provide the [Court] with the address of the person to be served.”

Fields v. Okla. State Penitentiary, 511 F.3d 1109, 1113 (10th Cir. 2007).

Accordingly, Plaintiff's Motion [#13] is **DENIED**.⁴ The Clerk of Court is directed to mail a copy of this Order to Plaintiff.

DATED: April 3, 2019

BY THE COURT:

s/Scott T. Varholak
United States Magistrate Judge

⁴ The Court again advises Plaintiff that he may qualify for assistance from the Colorado Bar Association Federal Pro Se Clinic, information available at <http://www.cobar.org/cofederalproseclinic> or by calling 303.380.8786.