

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

KENNETH COUNCE,

Plaintiff,

v.

Case No. 13-3199-JTM

RYAN WOLTING, ET AL.,

Defendants.

**MEMORANDUM AND ORDER**

Before the court is Joe Shepack and Ellsworth County, Kansas's motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1), 12 (b)(4), and/or 12(b)(5). Dkt. 96. They assert that they are not parties to this litigation, but were served with a summons and the complaint due to an over-inclusive docket sheet. *Id.* at 4. They ask the court to quash the service and dismiss them from this lawsuit. The court grants the motion even though the response time has not yet expired.

Service of a summons and the Final Amended Complaint upon Shepack and Ellsworth County was due to the court's failure to update the docket after entering its screening order (Dkt. 51). Joe Shepack and Ellsworth County are not named defendants in this action as confirmed by plaintiff in the "Amended Complaint for the Sole Purpose of [] Naming Each Intended Defendant in the Caption." Dkt. 59. *See also* Dkt. 51 (screening order listing remaining defendants). Accordingly, they are entitled to the requested relief.

**IT IS THEREFORE ORDERED** this 8th day of September, 2016, that the motion to dismiss (Dkt. 96) is **GRANTED**. Joe Shepack and Ellsworth County are dismissed from this case.

s/ J. Thomas Marten  
J. THOMAS MARTEN, Judge