

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

JOREL SHOPHAR AND)
SUSAUH SHOPHAR,)
)
Plaintiffs,)

v.)

UNITED STATES OF AMERICA,)
JUDGE KATHLEEN L. SLOAN,)
ERICA MILLER, STACEY BRAY,)
RICHARD KLEIN, MARC BERRY,)
KVC HEALTH, SAARAH AHMAD,)
KIMBERLY SMITH, PAUL LaFLEUR,)
TEENA WILKIE, NATHAN WILKIE,)
And KANSAS DEPARTMENT FOR)
CHILDREN AND FAMILIES,)
)
Defendants.)

Case No. 19-04052-HLT-KGG

**MEMORANDUM & ORDER GRANTING
DEFENDANTS’ MOTION TO QUASH SERVICE**

Now before the Court is Defendants Saarah Ahmad, KVC Health, and Kimberly Smith’s Motion to Quash Service.¹ (Doc. 16.) For the reasons set forth below, the undersigned Magistrate Judge **GRANTS** Plaintiff’s motion.

¹ Defendants’ original motion included a Motion to Join DCF’s Motion to Stay; however, DCF’s Motion to Stay has since been denied, making that portion of Defendants’ Motion **moot**. (See Doc. 33, text Order.)

FACTUAL BACKGROUND

On June 21, 2019, Plaintiffs filed Returns of Service in the United States District Court for the Northern District of Illinois, claiming that Defendants Ahmad, KVC Health, and Smith were properly served via certified mail. (Doc. 17, at 1.) Defendants Ahmad, KVC Health, and Smith were all served via certified mail on June 10, 2019, with the Returns of Service on each being signed by Plaintiff Jorel Shophar. (Doc. 17, at 1-2) (*see also* Doc. 18.) Defendants allege that service was not properly effectuated pursuant to Fed.R.Civ.P. 4(c)(2), as they were served by a party to this complaint. (Doc. 17, at 2.) Therefore, Defendants Ahmad, KVC Health, and Smith move to quash the purported service of process. *Id.*

ANALYSIS

Rule 4(c)(2) of the Federal Rules of Civil Procedure states that service of a summons may be carried out by “any person who is at least 18 years old and *not a party.*” Fed.R.Civ.P. 4(c)(2) (emphasis added); *Constien v. U.S.*, 628 F.3d 1207, 1213 (10th Cir. 2010) (holding that service of a summons was defective where the plaintiff himself mailed the summons).

Although Plaintiff argues in his responsive brief that the parties “were served upon by the U.S. Postal Service,” there is no real dispute that Plaintiff Jorel Shophar dispatched the summonses to Defendants Ahmad, KVC Health, and Smith

via certified mail. (Doc. 37, at 2.) The law in this circuit is that “[e]ven when service is effected by use of the mail, only a nonparty can place the summons and complaint in the mail.” *Constien v. U.S.*, 628 F.3d at 1213; *Hagan v. Credit Union of America*, 2011 WL 6739595, at *3 (D. Kan. 2011). Therefore, the summonses are defective pursuant to Rule 4(c)(2). The Court **GRANTS** Defendants’ Motion to Quash the purported service of summons.

IT IS THEREFORE ORDERED that Defendants Saarah Ahmad, KVC Health, and Kimberly Smith’s Motion to Quash Service (Doc. 16) be **GRANTED** as more fully set forth above.

IT IS SO ORDERED.

Dated this 29th day of July, 2019, at Wichita, Kansas.

S/ KENNETH G. GALE
HON. KENNETH G. GALE
U.S. MAGISTRATE JUDGE