Appeal No. 16-1489

IN THE UNITED STATES COURT OF APPEALS
EIGHTH CIRCUIT

CHURCH OF JESUS CHRIST CHRISTIAN/ARYAN NATIONS OF MISSOURI and PASTOR MARTIN LUTHER DZERZHINSKY LINDSTEDT, **Plaintiffs-Appellants,**	)	**Appeal from the U.S. District Court, Western District of Missouri Southwestern Div., Honorable Stephen Bough**
v.	)	
TERRY NEFF, et al., **Defendants-Appellees.**	)	

ADDENDUM TO BRIEF OF APPELLEES TERRY NEFF, NEWTON COUNTY, MISSOURI, NEWTON COUNTY SHERIFF'S DEPARTMENT, OREN BARNES, NEWTON COUNTY SHERIFF KEN COPELAND

/s/ Ron Mitchell
Ron Mitchell, Bar No. 24031
320 W. 4th St., P.O. Box 1626
Phone: (417) 623-1515
Fax: (417) 623-6865
mitchell@brmclaw.com
ATTORNEY FOR NEWTON COUNTY, MISSOURI, NEWTON COUNTY SHERIFF'S DEPARTMENT, SHERIFF KEN COPELAND, and OREN BARNES

/s/ Richard Strodtman
Richard Strodtman, Bar No. 61064
320 W. 4th St., P.O. Box 1626
Phone: (417) 623-1515
Fax: (417) 623-6865
strodtman@brmclaw.com
ATTORNEY FOR TERRY NEFF

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IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI SOUTHWESTERN DIVISION

THE CHURCH OF JESUS CHRIST CHRISTIAN, et al.	)	
Plaintiffs,	)	
v.	)	No. 3:13-cv-05020-SRB
NEWTON COUNTY, et al.	)	
Defendants.	)	

ORDER

Before the Court is Defendant Neff's Motion to Dismiss (Doc. #25). For the reasons stated herein, the motion is GRANTED.

I. Pleading Standard

Defendant Neff brings his motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). In order to survive the motion to dismiss, Plaintiffs' Pro Se Amended Complaint must meet the standard set out in Rule 8(a), which requires that a plaintiff plead sufficient facts to state a claim upon which relief may be granted. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citations omitted). A pleading that offers only "labels and conclusions" or a "formulaic recitation of the elements of a cause of action" is not sufficient. *Id.*

In determining whether the complaint alleges sufficient facts to state a plausible claim to relief, all factual allegations made by the plaintiff are accepted as true. *Great Plains Trust Co. v. Union Pac. R.R. Co.*, 492 F.3d 986, 995 (8th Cir. 2007) (noting that legal allegations are not accepted as true). If the facts in the complaint are sufficient for the Court to draw a reasonable

inference that Defendant is liable for the alleged misconduct, the claim has facial plausibility and will not be dismissed. *Iqbal*, 556 U.S. at 678. While pro se complaints must be construed liberally, "they must still allege sufficient facts to support the claims advanced." *Stone v. Harry*, 364 F.3d 912, 914 (8th Cir. 2004).

II. Background and Discussion

Plaintiffs The Church of Jesus Christ Christian/Aryan Nations of Missouri and Pastor Martin Luther Dzerhinsky Lindstedt, filed their original complaint on February 22, 2013. (Doc. #1). Plaintiffs filed a Pro Se Amended Complaint on September 26, 2014, naming Defendant Neff as a party for the first time.[1] Plaintiffs' claim against Neff arises from a guardianship proceeding instituted by Martin Lindstedt and involving his now-deceased mother, Martina Lindstedt, in which Neff was named as Martina's guardian ad litem. (Doc. #15, p. 5). Plaintiffs' Pro Se Amended Complaint is rambling, confusing, and fails to identify the specific claims alleged against any of the defendants. Plaintiffs' Pro Se Amended Complaint further fails to identify any involvement in these matters or injury suffered by The Church of Jesus Christ Christian/Aryan Nations of Missouri.

Even so, Plaintiffs' allegations of wrongdoing by Neff stem solely from Neff's role as guardian ad litem in the guardianship proceedings. Plaintiffs allege, "Neff drafted up an idiotic motion to dismiss the guardianship proceedings[.]" (Doc. #15, p. 6). Plaintiffs further allege that Neff's writing of the motion to dismiss caused Plaintiffs harm and allowed two other defendants to "embezzle Martina Lindstedt's estate." *Id.* In outlining the relief sought from Defendant Neff, Plaintiffs state, "[A] jury trial should determine whether Neff is incompetent to

[1] The Court notes that Plaintiffs filed their amended complaint without leave of Court in violation of Fed. R. Civ. P. 15(a)(2). As leave should be freely given "when justice so requires," the Court will treat the Pro Se Amended Complaint as the operative complaint, but Plaintiffs are reminded of their obligation to seek leave for any future amendments.

be an attorney or not and whether his bogus Motion to Dismiss encouraged Mike Lindstedt to think that he could do whatever he pleased in continuing to embezzle Martina Lindstedt's estate[.]"[2] (Doc. #15, p. 12). Plaintiffs seek damages from Defendant Neff. (Doc. #15, p. 14).

While Plaintiffs do not specifically state what claim they are bringing against Defendant Neff, they refer to the action as "federal civil rights litigation." (Doc. #15, p. 6). To the extent Plaintiffs attempt to state a claim for damages against Defendant Neff based on 42 U.S.C. § 1983, their claim is barred by absolute immunity. *See McCuen v. Polk Cty, Iowa*, 893 F.2d 172, 174 (8th Cir. 1990). In *McCuen*, the Eighth Circuit found a guardian ad litem absolutely immune from liability based on her preparation of and signing of a motion to stay that the plaintiff argued caused harm. *Id.* Similarly, Defendant Neff is absolutely immune from liability stemming from his preparation of and signing of the motion to dismiss.

This Court can discern no other cause of action that even might form the basis of a claim against Defendant Neff based on the facts alleged. Therefore, to the extent Plaintiffs attempt to bring a claim other than under 42 U.S.C. § 1983, Plaintiffs' Pro Se Amended Complaint fails to state a claim against Defendant Neff upon which relief can be granted and must be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

[2] Liberally construing the Pro Se Amended Complaint, it could be argued that Plaintiffs seek equitable relief against Defendant Neff in the form of him being stripped of his law license for being "incompetent." It is not within this Court's jurisdiction or power, however, to declare Defendant Neff "incompetent" or to strip him of his law license. Accordingly, to the extent Plaintiffs attempt to seek declaratory or injunctive relief against Defendant Neff, the Pro Se Amended Complaint fails to state such a claim.

Accordingly, it is hereby ORDERED that Defendant Neff's Motion to Dismiss (Doc. #25) is GRANTED.

/s/ Stephen R. Bough
STEPHEN R. BOUGH
United States District Judge

Dated: February 26, 2015

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI SOUTHWESTERN DIVISION

THE CHURCH OF JESUS CHRIST CHRISTIAN, et al.	)	
Plaintiffs,	)	
v.	)	No. 3:13-cv-05020-SRB
NEWTON COUNTY, et al.	)	
Defendants.	)	

ORDER

Before the Court is Defendants Newton County, Missouri's and Newton County Sheriff's Department's Motion to Dismiss (Doc. #47). For the reasons stated herein, the motion is GRANTED.

I. Pleading Standard

Defendants Newton County, Missouri and Newton County Sheriff's Department bring their motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). In order to survive the motion to dismiss, Plaintiffs' Pro Se Amended Complaint must meet the standard set out in Rule 8(a), which requires that a plaintiff plead sufficient facts to state a claim upon which relief may be granted. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citations omitted). A pleading that offers only "labels and conclusions" or a "formulaic recitation of the elements of a cause of action" is not sufficient. *Id.*

In determining whether the complaint alleges sufficient facts to state a plausible claim to relief, all factual allegations made by the plaintiff are accepted as true. *Great Plains Trust Co. v. Union Pac. R.R. Co.*, 492 F.3d 986, 995 (8th Cir. 2007) (noting that legal allegations are not

accepted as true). If the facts in the complaint are sufficient for the Court to draw a reasonable inference that a defendant is liable for the alleged misconduct, the claim has facial plausibility and will not be dismissed. *Iqbal*, 556 U.S. at 678. While pro se complaints must be construed liberally, "they must still allege sufficient facts to support the claims advanced." *Stone v. Harry*, 364 F.3d 912, 914 (8th Cir. 2004).

II. Background

Pro se Plaintiff Martin Lindstedt filed the original Complaint on behalf of himself and The Church of Jesus Christ Christian/Aryan Nations of Missouri naming Newton County and Newton County Sheriff's Department ("Newton County Defendants"), among others, as defendants on February 22, 2013. (Doc. #1). Returns of service on the Newton County Defendants were filed with the Court more than one-and-a-half years later on September 26, 2014, purporting to show that service was obtained on May 22, 2013. (Doc. ##12, 14). An Amended Complaint was filed on September 26, 2014, once again naming the Newton County Defendants as parties. (Doc. #15). Pro se Plaintiffs filed the Amended Complaint without first seeking leave of Court as required by Fed. R. Civ. P. 15(a)(2), but the Court stated in a prior order that it would consider the Amended Complaint as the operative complaint going forward given the standard that leave should be freely given "when justice so requires." (Doc. #36, p. 2 n.1).

On March 31, 2015, the Court entered an Order to Show Cause directing the Newton County Defendants to appear and state why they had failed to file a responsive pleading. (Doc. #42). The Newton County Defendants responded timely to the Court's order stating that they had received the Amended Complaint "at some point," but upon determining that the Amended Complaint stated no cognizable claim against the Newton County Defendants, they inadvertently failed to respond. (Doc. #46). At the same time, the Newton County Defendants filed the instant

motion to dismiss arguing that the Amended Complaint did not include any allegation of wrongdoing by the Newton County Defendants and, therefore, failed to state a cognizable claim. (Doc. #47). Pro se Plaintiffs filed an opposition to the motion to dismiss arguing primarily that the Newton County Defendants were complicit in Defendant Corporal Barnes' actions depriving Plaintiffs of their civil rights. (Doc. #51, p. 3-4).

As an initial matter, the Court must decide whether the Newton County Defendants' Motion to Dismiss is properly before the Court given that it was filed well outside of the timeframe proscribed by Fed. R. Civ. P. 12(a). This Court has held that "there is a recognized judicial preference for adjudication on the merits." *Christian v. Commerce Bank, N.A.*, No. 4:14-CV-00201 AGF, 2014 WL 2218720, at *1 (E.D. Mo. May 29, 2014) (citing *Jones v. Foster*, No. 4:12-CV-136 CAS, 2013 WL 508922, at *1 (E.D. Mo. Feb. 12, 2013); *Oberstar v. F.D.I.C.*, 987 F.2d 494, 504 (8th Cir. 1993)). "As a result of this preference, courts consider whether a party promptly responds to a missed deadline or otherwise has acted to defend the case on the merits." *Christian*, 2014 WL 2218720, at *1 (citation omitted). "Where the party has done so, courts frequently hold that the late filing is an oversight rather than an occasion to declare default." *Id.* Judgment by default is "only appropriate where there has been a clear record of delay or contumacious conduct." *Taylor v. City of Ballwin, Missouri, et al.*, 859 F.2d 1330, 1332 (8th Cir. 1988) (citation omitted).

Though the Newton County Defendants' lateness in filing a responsive pleading is significant, the Court cannot say that it was the result of contumacious conduct. No motion for default has been filed against the Newton County Defendants, and they timely responded to the Court's show cause order. The Court recently dismissed three other parties who were named in the Amended Complaint, and as a result, no scheduling order has yet been entered such that no

scheduling deadlines have lapsed. No party has filed a certificate of discovery with the Court suggesting that no discovery has occurred. Finally, for the reasons discussed more fully below, the Amended Complaint fails to state a claim upon which relief can be granted against either of the Newton County Defendants – a circumstance that was as true on the date the Amended Complaint was filed as it is today. As a result, pro se Plaintiffs have not been prejudiced as a result of the Newton County Defendants' delay, and the Newton County Defendants' Motion to Dismiss is properly before the Court for ruling.

III. Discussion

Plaintiffs' Amended Complaint focuses primarily on the alleged mishandling of Martin Lindstedt's now-deceased mother's estate by his brother, Michael Lindstedt. (Doc. #15). Plaintiffs allege that a Newton County Sheriff's deputy, Corporal Barnes, "took sides" in a dispute between Plaintiff Martin Lindstedt and his brother, and Corporal Barnes "told Plaintiff to leave or face arrest." (Doc. #15, pp. 2, 8). Plaintiffs' Amended Complaint does not identify specific claims against the Newton County Defendants but refers to the action as "federal civil rights litigation." (Doc. #15, p. 6). Accordingly, the Court will determine whether the Amended Complaint states a claim against the Newton County Defendants under 42 U.S.C. § 1983. "To establish a prima facie case under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) the action occurred 'under color of law' and (2) the action is a deprivation of a constitutional right or a federal statutory right." *Dunlap v. Schaaf*, No. 1:13CV182 SNLJ, 2014 WL 2452942, at *2 (E.D. Mo. June 2, 2014) (citations omitted).

Initially, Plaintiff The Church of Jesus Christ Christian/Aryan Nations of Missouri alleges *no* injury, and certainly no deprivation of a constitutional or federal statutory right. The Church of Jesus Christ Christian/Aryan Nations of Missouri is only mentioned once in the

Amended Complaint – on page 1 listing the names of the plaintiffs. (Doc. #15, p. 1). Further, Plaintiff Martin Lindstedt alleges no injury in connection with his role as pastor of The Church of Jesus Christ Christian. Accordingly, Plaintiff The Church of Jesus Christ Christian/Aryan Nations of Missouri fails to state a claim upon which relief can be granted against either of the Newton County Defendants.

Even assuming Plaintiffs' Amended Complaint alleged the deprivation of a constitutional or federal statutory right by one or both of the named Plaintiffs, the Amended Complaint fails to state a claim upon which relief can be granted. To state a claim under 42 U.S.C. § 1983 against the Newton County Defendants, Plaintiffs must "plead facts sufficient to show at least an inference that [their] constitutional rights were violated as a result of action taken pursuant to an official County policy, or as a result of misconduct so pervasive among non-policymakers as to constitute a widespread custom and practice with the force of law." *Davis v. St. Louis County, Missouri, et al.*, No. 4:14-CV-1563 CAS, 2015 WL 758218, at *14 (E.D. Mo. Feb. 23, 2015) (citing *Kuha v. City of Minnetonka*, 365 F.3d 590, 603-04 (8th Cir. 2003)). Identification of an official policy or widespread custom or practice that caused the deprivation of a civil right is required because "[i]t is well established that § 1983 will not support a claim based on a respondeat superior theory of liability." *Id.* at *11. Rather, "[l]iability under § 1983 requires a causal link to and direct responsibility for the alleged deprivation of rights." *Id.*

Plaintiffs' Amended Complaint is devoid of any allegation that Plaintiffs' constitutional or federal statutory rights were deprived as a result of a policy or custom of the Newton County Defendants. Rather, Plaintiffs' only specific allegation of wrongdoing by anyone associated with the Newton County Defendants is the single incident in which Corporal Barnes "took sides" and

"told Plaintiff to leave or face arrest."[1] As a result, Plaintiffs' Amended Complaint fails to state a claim upon which relief can be granted against the Newton County Defendants based on 42 U.S.C. § 1983. In addition, based on a review of the allegations in the Amended Complaint, this Court can discern no other cause of action that might form the basis of a claim against the Newton County Defendants. Therefore, to the extent Plaintiffs attempt to bring a claim other than under 42 U.S.C. § 1983, Plaintiffs' Amended Complaint fails to state a claim against the Newton County Defendants upon which relief can be granted and must likewise be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

Accordingly, it is hereby ORDERED that Defendants Newton County, Missouri's and Newton County Sheriff's Department's Motion to Dismiss (Doc. #47) is GRANTED.

/s/ Stephen R. Bough
STEPHEN R. BOUGH
United States District Judge

Dated: June 26, 2015

[1] The Amended Complaint includes a brief reference to an incident that occurred on December 5, 2005, in which "Plaintiff's teeth were knocked out by Newton County Sheriff's Department deputies[,]" but the reference seems more for historical purposes and not as part of Plaintiffs' claims in this case. (Doc. #15, pp. 9, 15). Further, this incident occurred outside of the applicable five-year statute of limitation. *See Jackson v. Crawford*, No. 12-4018-CV-C-FJG, 2015 WL 506233, at *3 (W.D. Mo. Feb. 6, 2015) ("The statute of limitations for plaintiff's Section 1983 claims is five years (the same as Missouri's statute of limitations for general personal injury torts).").

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI SOUTHWESTERN DIVISION

THE CHURCH OF JESUS CHRIST CHRISTIAN, et al.,	)	
Plaintiffs,	)	
v.	)	Case No. 3:13-cv-05020-SRB
NEWTON COUNTY, et al.	)	
Defendants.	)	

ORDER

Pro se Plaintiff Martin Lindstedt filed his Complaint on behalf of himself and The Church of Jesus Christ Christian/Aryan Nations of Missouri naming Michael Lindstedt, Crystal Courtney, Sheriff Ken Copeland ("Copeland"), and Deputy Sheriff Corporal Barnes ("Barnes"), among others, as defendants on February 22, 2013. (Doc. #1). Plaintiffs filed their Amended Complaint on September 26, 2014, naming the same defendants as parties. (Doc. #15). Plaintiffs' Amended Complaint focuses primarily on the alleged mishandling of Martin Lindstedt's now-deceased mother's estate by his brother, Michael Lindstedt. (Doc. #15). Plaintiffs refer to the action as "federal civil rights litigation," which is governed by 42 U.S.C. § 1983. (Doc. #15, p. 6).

Because Plaintiffs' operative complaint failed to state a cognizable claim against any of the remaining Defendants, the Court ordered Plaintiffs to show cause why Defendants Michael Lindstedt, Crystal Courtney, Copeland, and Barnes should not be dismissed. (Docs. ##57, 58, 59). As pleaded against Defendants Michael Lindstedt and Crystal Courtney, Plaintiffs could not state a § 1983 claim because neither Defendant is a government actor, and Plaintiffs failed to provide a sufficient factual basis to indicate they were harmed due to action "under color of

law." Plaintiffs failed to state a claim against Copeland in his supervisory position because the doctrine of respondeat superior does not apply to § 1983 cases, and the Amended Complaint failed to allege Copeland was personally involved, or directly responsible for, any deprivation of Plaintiffs' constitutional rights. With regard to Defendant Barnes, Plaintiffs did not allege any sort of cognizable constitutional violation. Instead, Plaintiffs alleged merely verbal threats, and indicated no more than a minimal interaction with Defendant Barnes devoid of force or injury. Plaintiffs entered their responses to the Court's show cause orders on November 2, 2015, and November 3, 2015, stating similar factual allegations as in their Amended Complaint. (Docs. ##60, 61).

Fed. R. Civ. P. 12(b)(6) states a claim may be dismissed for "failure to state a claim upon which relief can be granted." "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)) (internal citations omitted). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678. "Although it is to be liberally construed, a pro se complaint must contain specific facts supporting its conclusions." Martin v. Sargent, 780 F.2d 1334, 1337 (8th Cir. 1985). "[A] district court sua sponte may dismiss a complaint under Rule 12(b)(6)." Smith v. Boyd, 945 F.2d 1041, 1043 (8th Cir. 1991).

Plaintiffs' responses to the Court's show cause orders simply describe and restate the allegations set forth in their Amended Complaint under the guise of "genuine material facts." Plaintiffs fail to bring new material facts to the Court's attention, and allege no different legal or factual basis upon which they might state a claim. Thus, for the same reasons set forth in the

Court's Show Cause Orders (Docs. ##57, 58, 59), Plaintiffs' Amended Complaint cannot survive a 12(b)(6) motion. Since Plaintiffs' Amended Complaint and show cause responses demonstrate that they cannot meet the pleading standard under Fed. R. Civ. P 12(b)(6), and because Plaintiffs have failed to provide adequate cause why this action should not be dismissed, the Court sua sponte dismisses Plaintiffs' Amended Complaint.

In Plaintiffs' show cause responses, Plaintiffs ask for an opportunity to amend their claims against the Defendants dismissed in this Order, and argue that "this Court must grant Plaintiffs leave to file an amended complaint." (Doc. #61, p. 15). Plaintiffs also request "that other past Defendants, particularly Judges Kevin Lee Selby and Timothy Perigo . . . be joined back into this litigation . . . ." (Doc. #61, p. 15).

"Parties do not have an absolute right to amend their pleadings, even under [Fed R. Civ P. 15(a)'s] liberal standard." Sherman v. Winco Fireworks, Inc., 532 F.3d 709, 715 (8th Cir. 2008). "Futility is a valid basis for denying leave to amend." U.S. ex rel. Roop v. Hypoguard USA, Inc., 559 F.3d 818, 822 (8th Cir. 2009). "Denial of a motion for leave to amend on the basis of futility means the district court has reached the legal conclusion that the amended complaint could not withstand a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure." Zutz v. Nelson, 601 F.3d 842, 850–51 (8th Cir. 2010) (internal quotations omitted); see, e.g., Gray v. McQuilliams, 14 F. App'x 726, 727 (8th Cir. 2001) (finding district court's denial of leave to amend pro se § 1983 complaint was not an abuse of discretion, where "[t]he court already had given [plaintiff] multiple opportunities to amend, and one of the proposed amended complaints would have been futile").

The Court has previously dismissed Defendants Newton County, Missouri, Newton County Sheriff's Department, Kevin Lee Selby, Timothy Perigo, and Terry Neff. (Docs. ##36,

37, 53). Although Plaintiffs demand the Court allow them an opportunity to file an Amended Complaint, Plaintiffs did not file a formal motion requesting leave to amend, failed to attach a proposed amended complaint, and do not include any indication of what information might be added, or new allegations that might be made, that would cause an amended complaint to survive a 12(b)(6) motion. See Drobnak v. Andersen Corp., 561 F.3d 778, 787 (8th Cir. 2009) ("A district court does not abuse its discretion in failing to invite an amended complaint when plaintiff has not moved to amend and submitted a proposed amended pleading."); see also Pet Quarters, Inc. v. Depository Trust & Clearing Corp., 559 F.3d 772, 782 (8th Cir. 2009) ("Leave to amend generally is inappropriate . . . where the plaintiff has not indicated how it would make the complaint viable, either by submitting a proposed amendment or indicating somewhere in its court filings what an amended complaint would have contained."). Thus, because the Court finds Plaintiffs' Amended Complaint could not withstand a motion to dismiss under 12(b)(6), Plaintiffs' request to amend is denied as futile.

Accordingly, it is hereby

ORDERED the four remaining Defendants—Michael Lindstedt, Crystal Courtney, Copeland, and Barnes—are dismissed.

/s/ Stephen R. Bough
STEPHEN R. BOUGH
UNITED STATES DISTRICT JUDGE

Dated: November 12, 2015

CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2016 I electronically filed the Brief and Addendum of Appellees Terry Neff, Newton County, Newton County Sheriff's Department, Ken Copeland, and Oren Barnes with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. Participants in this case who are registered CM/ECF users will be served by the CM/ECF system. Participants who are not registered users will be served by mailing a copy of the Brief and Addendum to their home addresses:

Martin Lindstedt
338 Rabbit Track Road
Granby, MO 64844

Michael Lindstedt
684 Bacon Ridge Rd
Neosho, MO 64850

Crystal Courtney
378 Rabbit Track Road
Granby, MO 64844

/s/ Richard Strodtman