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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

NORRIS LEE,

1:02-cv-05037-LJO-GSA-PC

Plaintiff,

ORDER TO SHOW CAUSE WHY
DEFENDANT GARCIA SHOULD NOT BE
DISMISSED FROM THIS ACTION

v.

C/O HOUGH, et al.,

RESPONSE FROM PLAINTIFF DUE IN
THIRTY DAYS

Defendants.

_____ /

Norris Lee (“Plaintiff”) is a state prisoner proceeding pro se with this civil rights action filed pursuant to 42 U.S.C. § 1983. This action now proceeds with the Second Amended Complaint filed by Plaintiff on March 23, 2010, against defendants Correctional Officers M. Garcia, E. Hough, and M. White (“Defendants”), for failure to protect Plaintiff in violation of the Eighth Amendment.¹ (Doc. 36.)

On September 9, 2010, the Court forwarded documents to Plaintiff with instructions to complete and return them to the Court for service of process on Defendants. (Doc. 46.) On September 22, 2010, Plaintiff returned the completed documents, and the Court ordered the United States Marshal (“Marshal”) to initiate service of process upon Defendants. (Docs. 47, 48.)

¹On August 26, 2010, all other claims and defendants were dismissed from this action by the Court, based on Plaintiff’s failure to state a claim. (Doc. 45.)

1 On December 13, 2010, defendant White filed an answer. (Doc. 52.) On March 3, 2011,
2 defendant Hough filed an answer. (Doc. 66.) On May 9, 2011, the Marshal filed a return of
3 service unexecuted as to defendant Garcia, together with a notice from the California Substance
4 Abuse Treatment Facility (“SATF”) informing the Marshal that M. Garcia is not currently
5 employed at SATF and could not be identified.² Plaintiff shall be ordered to show cause why
6 defendant Garcia should not be dismissed from this action for failure to successfully complete
7 service of process. Within thirty days, Plaintiff shall file a written response with the Court
8 explaining why defendant Garcia should not be dismissed. In the alternative, Plaintiff may file a
9 non-opposition to the dismissal of defendant Garcia.

10 Accordingly, IT IS HEREBY ORDERED that:

- 11 1. Within thirty days from the date of service of this order, Plaintiff shall file a
12 written response showing cause why defendant Garcia should not be dismissed
13 from this action for failure to successfully complete service of process;
- 14 2. In the alternative, Plaintiff may file a written non-opposition to the dismissal of
15 defendant Garcia; and
- 16 3. Plaintiff’s failure to comply with this order shall result in a recommendation that
17 this action be dismissed.

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19 IT IS SO ORDERED.

20 Dated: July 19, 2011

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE

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²The Litigation Coordinator from SATF informed the Marshal that M. Garcia was “not currently employed at CSATF” and “could not be identified.” Doc. 84 at 2.) “There were two possibilities; however neither person was working at CDCR until after 2003. The complaint alleges the incident occurred in 2000.” Id.