

## UNITED STATES DISTRICT COURT

## EASTERN DISTRICT OF CALIFORNIA

LOUIS RICHARD FRESQUEZ,

1:04-cv-05123-AWI-GSA-PC

Plaintiff,

ORDER DISCHARGING ORDER TO SHOW  
CAUSE  
(Doc. 49.)

v.

MOEROYK, et al.,

ORDER DIRECTING UNITED STATES  
MARSHAL TO FURTHER ATTEMPT  
SERVICE ON DEFENDANTS USING  
ASSISTANCE OF CDCR'S DEPARTMENT OF  
LEGAL AFFAIRS

Defendants.

/

**I. BACKGROUND**

Louis Richard Fresquez (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action alleging prison officials violated the Americans with Disabilities Act and the Rehabilitation Act. Plaintiff filed this action on March 11, 2003 in the Northern District of California. On March 18, 2003, Plaintiff filed an amended complaint. The case was subsequently transferred to this court and received on January 20, 2004. This action now proceeds on Plaintiff’s amended complaint filed on March 18, 2003, against defendants Maka and Moeroyk only (“Defendants”), on Plaintiff’s ADA and RA claims concerning conditions of confinement.

**II. ORDER TO SHOW CAUSE**

On February 19, 2010, the court issued an order for Plaintiff to show cause why this action should not be dismissed for failure to serve the Defendants. (Doc. 49.) The court’s order

1 was issued based on the return of unexecuted service filed by the United States Marshal on  
2 September 21, 2009. (Doc. 44.) Upon further review of the record, the court finds that  
3 additional service upon Defendants is appropriate. Therefore, the court's order to show cause  
4 shall be discharged, and Plaintiff is excused from filing a response.

5 **III. RE-SERVICE BY UNITED STATES MARSHAL**

6 On July 8, 2009, the court issued an order directing the United States Marshal to initiate  
7 service of process in this action upon Defendants Maka and Moeryk. (Doc. 42.) On September  
8 21, 2009, the Marshal filed returns of service unexecuted as to Defendants Mata and Moeryk,  
9 with a notation that service was mailed to Defendants on August 12, 2009, and on September 15,  
10 2009, the CDC Locator indicated that Defendants' names were not found on their list. (Doc. 44.)  
11 Neither of the two defendants in this action was successfully served.

12 The court's order of July 8, 2009, directed the Marshal to personally serve process if a  
13 waiver of service was not returned by a defendant within sixty days of the date of mailing the  
14 request of waiver. (Doc. 42 at 2 ¶5.) The Marshal was also directed to "command all necessary  
15 assistance from the CDCR, *including commanding the CDCR to enlist the assistance of the*  
16 *CDCR's Department of Legal Affairs, to execute th[e court's] order.*" Id. (emphasis added)  
17 There is no indication on the Marshal's documents that the Department of Legal Affairs was  
18 consulted or that personal service was attempted for either defendant. Accordingly, the court  
19 finds it appropriate at this juncture to order additional service.

20 Accordingly, IT IS HEREBY ORDERED that:

21 1. The court's order to show cause, issued on February 19, 2010, is discharged, and  
22 Plaintiff is excused from filing a response;

23 2. The Clerk of Court is directed to forward the following documents to the United States  
24 Marshal:

25 (1) One completed and issued summons for each defendant to be served;  
26 (2) One completed USM-285 form for each defendant to be served;  
27 (3) One copy of the complaint filed on March 18, 2003 for each defendant to  
28 be served, plus an extra copy for the Marshal (See Doc. 1.);

(4) One copy of this order for each defendant to be served, plus an extra copy for the Marshal; and

(5) One copy of the court's consent form for each defendant to be served;

3. Within sixty days from the date of this order, the United States Marshal is directed to:

a. Personally serve process and a copy of this order upon Defendants

MATA and MOERYK pursuant to Rule 4 of the Federal Rules of Civil

Procedure and 28 U.S.C. § 566(c) and shall command all necessary

assistance from the CDCR, *including commanding the CDCR to enlist*

*assistance of the CDCR's Department of Legal Affairs, to execute this*

order. The United States Marshal shall maintain the confidentiality of

information provided by the CDCR pursuant to this order;

b. Within ten days after personal service is effected, the United States

Marshal shall file the return of service for the Defendants, along with

evidence of the costs incurred in effecting service on said Defendants.

Said costs shall be enumerated on the USM-283 form and shall include the

costs incurred by the Marshal's office for photocopying additional copies

of the summons and complaint and for preparing new USM-285 forms, if

requirida,

it that deci-

4. In the event that defendants make an appearance in this action by filing an answer, dispositive motion, or other pleading, the U.S. Marshals Service need not personally serve those defendants; and

5. In the event that defendants are personally served, defendants are required to reply to the complaint. 42 U.S.C. §1997e(g)(2).

IT IS SO ORDERED.

Dated: April 22, 2010

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE