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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CARLOS HENDON,

1:05-cv-01247-AWI-GSA-PC

Plaintiff,

ORDER FOR PLAINTIFF TO SHOW CAUSE
WHY DEFENDANT HAMILTON SHOULD
NOT BE DISMISSED FOR FAILURE TO
PROVIDE INFORMATION SUFFICIENT TO
EFFECT SERVICE

v.

BAROYA, et al.,

(Doc. 29.)

Defendants.

THIRTY DAY DEADLINE

_____ /

I. BACKGROUND

Carlos Hendon (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the complaint commencing this action on September 30, 2005. (Doc. 1.) This action now proceeds on Plaintiff’s Second Amended Complaint filed on June 26, 2008, against defendants Baroya, Pham, Hamilton, Nguyet, Hoppe, Griffin, and Reidman for subjecting him to cruel and unusual punishment in violation of the Eighth Amendment. (Doc. 18.)

II. SERVICE BY UNITED STATES MARSHAL

On May 14, 2009, the court issued an order directing the United States Marshal to initiate service of process in this action upon defendants in this action. (Doc. 27.) All of the defendants were successfully served except defendants Hamilton and Hoppe.

1 ***Defendant Hoppe***

2 On October 26, 2009, the Marshal filed a return of service unexecuted as to defendant
3 Hoppe. (Doc. 38.) Based on the information set forth in the returned USM-285 forms, the Court
4 cannot make a finding that Plaintiff has not provided sufficient information to locate this
5 defendant. Therefore, by separate order, the Marshal shall be directed to initiate re-service upon
6 defendant Hoppe by contacting the Legal Affairs Division of the California Department of
7 Corrections and Rehabilitation for assistance.

8 ***Defendant Hamilton***

9 On June 25, 2009, the Marshal filed a return of service unexecuted as to defendant
10 Hamilton. (Doc. 29.)

11 Pursuant to Rule 4(m),

12 [i]f service of the summons and complaint is not made upon a defendant within
13 120 days after the filing of the complaint, the court, upon motion or on its own
14 initiative after notice to the plaintiff, shall dismiss the action without prejudice as
15 to that defendant or direct that service be effected within a specified time;
16 provided that if the plaintiff shows good cause for the failure, the court shall
17 extend the time for service for an appropriate period.

18 Fed.R.Civ.P. 4(m).

19 In cases involving a plaintiff proceeding in forma pauperis, the Marshal, upon order of the
20 Court, shall serve the summons and the complaint. Fed.R.Civ.P. 4(c)(2). “[A]n incarcerated
21 prose plaintiff proceeding in forma pauperis is entitled to rely on the U.S. Marshal for service of
22 the summons and complaint and ... should not be penalized by having his action dismissed for
23 failure to effect service where the U.S. Marshal or the court clerk has failed to perform his
24 duties.” Walker v. Sumner, 14 F.3d 1415, 1422 (9th Cir. 1994) (quoting Puett v. Blandford, 912
25 F.2d 270, 275 (9th Cir. 1990)), abrogated on other grounds by Sandin v. Connor, 515 U.S. 472
26 (1995). “So long as the prisoner has furnished the information necessary to identify the
27 defendant, the marshal’s failure to effect service is ‘automatically good cause’” Walker, 14
28 F.3d at 1422 (quoting Sellers v. United States, 902 F.2d 598, 603 (7th Cir.1990)). However,
where a pro se plaintiff fails to provide the Marshal with accurate and sufficient information to
effect service of the summons and complaint, the Court’s sua sponte dismissal of the unserved

1 defendants is appropriate. Walker, 14 F.3d at 1421-22.

2 In this instance, Plaintiff has not provided sufficient information to identify defendant
3 Hamilton and locate the defendant for service of process. (Doc. 29.) If Plaintiff is unable to
4 provide the Marshal with additional information, defendant Hamilton shall be dismissed from the
5 action, without prejudice. Pursuant to Rule 4(m), the Court will provide Plaintiff with the
6 opportunity to show cause why defendant Hamilton should not be dismissed from the action at
7 this time.

8 **III. CONCLUSION**

9 Accordingly, based on the foregoing, it is HEREBY ORDERED that:

- 10 1. Within **thirty (30) days** from the date of service of this order, Plaintiff shall show
11 cause why defendant Hamilton should not be dismissed from this action; and
- 12 2. The failure to respond to this order or the failure to show cause will result in the
13 dismissal of defendant Hamilton from this action.

14
15 IT IS SO ORDERED.

16 **Dated: September 8, 2010**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE