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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

VICTOR M. ULTRERAS,

1:07-cv-00035-AWI-GSA-PC

Plaintiff,

ORDER FOR PLAINTIFF TO SHOW CAUSE WHY DEFENDANTS LEE, GUPTA, SHEN, KELLAWAN, LEONG, AND AKANNO SHOULD NOT BE DISMISSED FOR PLAINTIFF'S FAILURE TO EFFECT SERVICE

v.

MICHAEL SONGER, M.D., et al.,

Defendants.

THIRTY DAY DEADLINE

_____ /

I. BACKGROUND

Victor M. Ultreras ("Plaintiff") is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. This action was initiated by civil complaint filed on January 8, 2007, naming as Defendants Dr. Songer, Dr. Ramos, Dr. Wiltchik, Warden Vasquez, Dr. T. Lee, Dr. A. Gupta, Dr. C. Shen, Dr. Karl K. Kellawan, Dr. Leong, and Dr. Akanno. (Doc. 1.) At the time the complaint was filed, Plaintiff was an inmate in the custody of the California Department of Corrections and Rehabilitation (CDCR) at Wasco State Prison. Plaintiff paid the filing fee and is therefore not proceeding in forma pauperis. Accordingly, summonses were issued, and Plaintiff was directed to effect service upon Defendants. (Doc. 7.) On January 20, 2009, Defendants Dr. Songer, Dr. Ramos, Dr. Wiltchik and Warden Vasquez filed an answer to the complaint. (Doc. 9.)

1 On March 13, 2009, Plaintiff notified the court that he was still trying to locate and serve
2 Defendants Dr. T. Lee, Dr. A. Gupta, Dr. C. Shen, Dr. Karl K. Kellawan, Dr. Leong, and Dr.
3 Akanno. (Doc. 12.) To date, Plaintiff has not filed any evidence that Defendants Lee, Gupta,
4 Shen, Kellawan, Leong, and Akanno have been served with process, and none of these six
5 defendants has made an appearance in this action.

6 **II. RULE 4(m) OF THE FEDERAL RULES OF CIVIL PROCEDURE**

7 Pursuant to Rule 4(m),

8 [i]f service of the summons and complaint is not made upon a defendant within
9 120 days after the filing of the complaint, the court, upon motion or on its own
10 initiative after notice to the plaintiff, shall dismiss the action without prejudice as
11 to that defendant or direct that service be effected within a specified time;
provided that if the plaintiff shows good cause for the failure, the court shall
extend the time for service for an appropriate period.

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

13 In this instance, the Court has not received any evidence that Defendants Lee, Gupta,
14 Shen, Kellawan, Leong, and Akanno have been served with process. Pursuant to Rule 4(m), the
15 Court will provide Plaintiff with the opportunity to show cause why these six Defendants should
16 not be dismissed from the action at this time.

17 **III. CONCLUSION**

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

- 19 1. Within **thirty (30) days** from the date of service of this order, Plaintiff shall show
20 cause why Defendants Lee, Gupta, Shen, Kellawan, Leong, and Akanno should
21 not be dismissed from this action based on Plaintiff's failure to effect service;
- 22 2. The failure to show cause will result in the dismissal of defendants Lee, Gupta,
23 Shen, Kellawan, Leong, and Akanno from this action; and
- 24 3. Plaintiff's failure to respond to this order will result in a recommendation that this
25 action be dismissed.

26
27 IT IS SO ORDERED.

28 **Dated: September 8, 2010**

/s/ Gary S. Austin

UNITED STATES MAGISTRATE JUDGE

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