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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOSHUA J. CANTU,)	1:09cv00177 AWI DLB PC
)	
Plaintiff,)	ORDER REQUIRING PLAINTIFF TO
)	SHOW CAUSE WHY DEFENDANT
vs.)	WILLIAMS SHOULD NOT BE DISMISSED
)	PURSUANT TO RULE 4(M)
M. GARCIA, et al.,)	
)	THIRTY-DAY RESPONSE DEADLINE
Defendants.)	

Plaintiff Joshua J. Cantu (“Plaintiff”) is a prisoner in the custody of the California Department of Corrections and Rehabilitation (“CDCR”). Plaintiff is proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on Plaintiff’s Second Amended Complaint against Defendants Garcia, Gorgee, Baptiste and Williams.

Defendant Garcia filed an answer on December 20, 2011. At the time, Plaintiff had not yet found the identities of the other three Defendants. After Plaintiff discovered the necessary information, the Court ordered service for the three new Defendants on July 25, 2013.

Defendants Garcia and Gorgee filed an answer to the Second Amended Complaint on February 24, 2014.

On March 6, 2014, the United States Marshal returned service for Defendants Williams and Baptiste as unexecuted.

1 On July 10, 2014, the Court ordered the Marshal to reinitiate service on Defendants
2 Williams and Baptiste, and to contact the Legal Affairs Division of CDCR if necessary. The
3 Court also ordered the Marshal to request the assistance of a Special Investigator, if necessary.

4 The Marshal was not able to locate Defendant Williams and service was returned un-
5 executed on July 24, 2014.

6 Rule 4(m) of the Federal Rules of Civil Procedure provides:

7 If a defendant is not served within 120 days after the complaint is filed, the court -
8 on motion or on its own after notice to the plaintiff - must dismiss the action
9 without prejudice against that defendant or order that service be made within a
10 specified time. But if the plaintiff shows good cause for the failure, the court
must extend the time for service for an appropriate period.

11 In cases involving a plaintiff proceeding in forma pauperis,¹ the Marshal, upon order of
12 the Court, shall serve the summons and the complaint. 28 U.S.C. § 1915(d); Fed. R. Civ. P.
13 4(c)(3). “[A]n incarcerated pro se plaintiff proceeding in forma pauperis is entitled to rely on the
14 U.S. Marshal for service of the summons and complaint and [he] should not be penalized by
15 having his action dismissed for failure to effect service where the U.S. Marshal or the court clerk
16 has failed to perform his duties.” *Walker v. Sumner*, 14 F.3d 1415, 1422 (9th Cir. 1994) (internal
17 quotations and citation omitted), *abrogated on other grounds by Sandin v. Connor*, 515 U.S. 472
18 (1995). “So long as the prisoner has furnished the information necessary to identify the
19 defendant, the marshal’s failure to effect service is automatically good cause. . . .” *Walker*, 14
20 F.3d at 1422 (internal quotations and citation omitted). However, where a pro se plaintiff fails to
21 provide the Marshal with accurate and sufficient information to effect service of the summons
22 and complaint, the Court’s sua sponte dismissal of the unserved defendants is appropriate.
23 *Walker*, 14 F.3d at 1421-22.

24 At this juncture, the Marshal’s Office has exhausted the avenues available to it in
25 attempting to locate and serve Defendant Williams. The Marshal contacted the Legal Affairs
26 Department and requested the assistance of a Special Investigator. However, the Special
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28 ¹ Although Plaintiff paid the filing fee for this action, he is proceeding in forma pauperis for purposes of service.

1 Investigator indicated that Defendant Williams could not be identified without additional
2 information. *Walker*, 14 F.3d at 1421-22. Plaintiff shall be provided with an opportunity to
3 show cause why Defendant Williams should not be dismissed. Fed. R. Civ. P. 4(m). If Plaintiff
4 either fails to respond to this order or responds but fails to show cause, Defendant Williams shall
5 be dismissed from this action.

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

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

11 IT IS SO ORDERED.

12 Dated: July 31, 2014

13 /s/ Dennis L. Beck
14 UNITED STATES MAGISTRATE JUDGE
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