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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHN DOE,

CASE NO. 1:09-CV-00544-DLB (PC)

Plaintiff,

ORDER REQUIRING PLAINTIFF TO SHOW
CAUSE WITHIN THIRTY DAYS WHY
DEFENDANT **JULIO CAMPOS** SHOULD
NOT BE DISMISSED FOR FAILURE TO
PROVIDE INFORMATION SUFFICIENT TO
EFFECT SERVICE

v.

JULIO CAMPOS, et al.,

Defendants.

(DOC. 38)

Plaintiff John Doe¹ (“Plaintiff”) is a prisoner in the custody of the California Department of Corrections and Rehabilitation, proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on Plaintiff’s first amended complaint, filed on July 10, 2009. (Doc. 20.) On September 29, 2009, the Court issued an order directing the United States Marshal to initiate service of process on six Defendants. (Doc. 29.) The Marshal was unable to locate and serve Defendant Julio Campos and on January 25, 2010, the USM-285 form was returned to the Court. (Doc. 38.)

Pursuant to Rule 4(m),

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

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

¹ John Doe is a fictitious name.

1 In cases involving a plaintiff proceeding in forma pauperis, the Marshal, upon order of the
2 Court, shall serve the summons and the complaint. Fed. R. Civ. P. 4(c)(2). “[A]n incarcerated pro
3 se plaintiff proceeding in forma pauperis is entitled to rely on the U.S. Marshal for service of the
4 summons and complaint and ... should not be penalized by having his action dismissed for failure
5 to effect service where the U.S. Marshal or the court clerk has failed to perform his duties.” *Walker*
6 *v. Sumner*, 14 F.3d 1415, 1422 (9th Cir. 1994) (quoting *Puett v. Blandford*, 912 F.2d 270, 275 (9th
7 Cir. 1990)), *abrogated in part on other grounds, Sandin v. Conner*, 515 U.S. 472 (1995). “So long
8 as the prisoner has furnished the information necessary to identify the defendant, the marshal’s
9 failure to effect service is ‘automatically good cause’” *Walker*, 14 F.3d at 1422 (quoting *Sellers*
10 *v. United States*, 902 F.2d 598, 603 (7th Cir.1990)). However, where a pro se plaintiff fails to
11 provide the Marshal with accurate and sufficient information to effect service of the summons and
12 complaint, the Court’s *sua sponte* dismissal of the unserved defendants is appropriate. *Walker*, 14
13 F.3d at 1421-22.

14 In this instance, the address provided by Plaintiff for Defendant Julio Campos is no longer
15 accurate, as Defendant Julio Campos is no longer employed at Kern Valley State Prison. (Doc. 38.)
16 If Plaintiff is unable to provide the Marshal with a current address or other helpful information by
17 which Defendant Julio Campos can be located (such as time and place of employment, first name,
18 badge number), the Defendant shall be dismissed from the action, without prejudice. Pursuant to
19 Rule 4(m), the Court will provide Plaintiff with the opportunity to show cause why Defendant Julio
20 Campos should not be dismissed from the action at this time.

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

- 22 1. Within **thirty (30) days** from the date of service of this order, Plaintiff shall show
23 cause why Defendant Julio Campos should not be dismissed from this action; and
- 24 2. The failure to respond to this order or the failure to show cause will result in
25 dismissal of Defendant Julio Campos from this action.

26 IT IS SO ORDERED.

27 **Dated: September 21, 2010**

28 /s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE