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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JIMMY MCDONALD,

CASE NO. 1:09-cv-00730-OWW-SKO PC

Plaintiff,

ORDER REQUIRING PLAINTIFF TO
PROVIDE FURTHER IDENTIFYING
INFORMATION FOR DEFENDANTS CLARK
AND RODRIGUEZ OR SHOW CAUSE WHY
THEY SHOULD NOT BE DISMISSED

v.

J. A. YATES, et al.,

Defendants.

(Docs. 23 and 24)

THIRTY-DAY DEADLINE

_____/

Plaintiff Jimmy McDonald, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on April 24, 2009. The action is proceeding against Defendants Cano, Clark, Rodriguez, and Roberts arising out of their failure to accommodate Plaintiff's medical need for a lower bunk, in violation of the Eighth Amendment. Defendants Cano and Roberts filed an answer to Plaintiff's complaint on July 6, 2011, but the United States Marshal was unable to locate and serve Defendants Clark and Rodriguez and service was returned unexecuted on June 2, 2011.

Rule 4(m) provides that

[i]f 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 In cases involving a plaintiff proceeding in forma pauperis, the Marshal, upon order of the
2 Court, shall serve the summons and the complaint. 28 U.S.C. § 1915(d); Fed. R. Civ. P. 4(c)(3).
3 “[A]n incarcerated pro se plaintiff proceeding in forma pauperis is entitled to rely on the U.S.
4 Marshal for service of the summons and complaint and . . . should not be penalized by having his
5 action dismissed for failure to effect service where the U.S. Marshal or the court clerk has failed to
6 perform his duties.” Walker v. Sumner, 14 F.3d 1415, 1422 (9th Cir. 1994) (quoting Puett v.
7 Blandford, 912 F.2d 270, 275 (9th Cir. 1990)), abrogated on other grounds by Sandin v. Connor, 515
8 U.S. 472 (1995). “So long as the prisoner has furnished the information necessary to identify the
9 defendant, the marshal’s failure to effect service is ‘automatically good cause. . . .’” Walker, 14 F.3d
10 at 1422 (quoting Sellers v. United States, 902 F.2d 598, 603 (7th Cir.1990)). However, where a pro
11 se plaintiff fails to provide the Marshal with accurate and sufficient information to effect service of
12 the summons and complaint, the Court’s sua sponte dismissal of the unserved defendants is
13 appropriate. Walker, 14 F.3d at 1421-22.

14 In this instance, there are three correctional officers with the last name of Clark and seven
15 correctional officers with the last name of Rodriguez at Pleasant Valley State Prison.¹ (Doc. 24, p.
16 2.) Therefore, further identifying information is necessary, preferably in the form of a first initial
17 or an exhibit bearing the defendants’ names, if possible. If Plaintiff is unable to provide any further
18 information, he must show cause why Defendants Clark and Rodriguez should not be dismissed from
19 action at this time.

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

- 21 1. Within **thirty (30) days** from the date of service of this order, Plaintiff shall either
22 (1) provide further identifying information for Defendants Clark and Rodriguez or
23 (2) show cause why they should not be dismissed from the action at this time; and

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27 ¹ The Clerk’s Office erroneously identified Rodriguez as Rodrigues in the service documents, but the
28 Litigation Office addressed that error by informing the Marshal that they do not have any employees named
Rodrigues and seven employees named Rodriguez.

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2. The failure to comply with this order will result in the dismissal of Defendants Clark and Rodriguez from this action.

IT IS SO ORDERED.

Dated: July 7, 2011

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE