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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

RICHARD ALAN LAWSON,

Plaintiff,

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DONALD YOUNGBLOOD, et al.,

Defendants.

Case No. 1:09-cv-00992-LJO-MJS (PC)

ORDER REQUIRING PLAINTIFF TO SHOW CAUSE WHY DEFENDANT CLEMENTE SHOULD NOT BE DISMISSED FOR FAILURE TO PROVIDE SUFFICIENT INFORMATION TO EFFECTUATE SERVICE OF PROCESS

(ECF No. 86)

THIRTY DAY DEADLINE

Plaintiff is a former state prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. The matter proceeds on the Second Amended Complaint claims of inadequate medical care by Defendants Laird, Chang, Sawaske, Embrey, and Clemente, and excessive force by Defendant Laird.

The United States Marshal was ordered to initiate service of process on January 11, 2012. (ECF No. 26.) The Marshal could not locate Defendant Clemente for service and on September 17, 2012 returned summons unexecuted. (ECF No. 38.) On October 29, 2012, the Court ordered the Marshal to again attempt service on Defendant Clemente. (ECF No. 53.) The Marshal, despite numerous attempts, was unable to locate Clemente. The summons on re-service was returned unexecuted on May 12,

2014. (ECF No. 86.)

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).

In cases involving a plaintiff proceeding in forma pauperis, the Marshal, upon order of the Court, shall serve the summons and the complaint. 28 U.S.C. § 1915(d); Fed. R. Civ. P. 4(c)(3). "[A]n incarcerated pro se plaintiff proceeding in forma pauperis is entitled to rely on the U.S. Marshal for service of the summons and complaint and . . . should not be penalized by having his action dismissed for failure to effect service where the U.S. Marshal or the court clerk has failed to perform his duties." Walker v. Sumner, 14 F.3d 1415, 1422 (9th Cir. 1994), quoting *Puett v. Blandford*, 912 F.2d 270, 275 (9th Cir. 1990), abrogated on other grounds by Sandin v. Connor, 515 U.S. 472 (1995). "So long as the prisoner has furnished the information necessary to identify the defendant, the [M]arshal's failure to effect service is automatically good cause " Walker, 14 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 defendant(s) is appropriate. Walker, 14 F.3d at 1421-22.

After Defendant Clemente's waiver of service was returned unexecuted, the Marshal attempted personal service. (ECF No. 86.) . The Marshal's Office advises it has

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been "unable to locate/identify, no such person listed at last known address." (Id.)

Based on this information, the Court finds that the avenues available to locate and serve Defendant Clemente have been exhausted. *Walker*, 14 F.3d at 1421-22. It appears that dismissal of Defendant Clemente is appropriate at this time. However, the Court will provide Plaintiff with an opportunity to show cause why Defendant Clemente should not be dismissed. Fed. R. Civ. P. 4(m).

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

- 1. Within thirty (30) days from the date of service of this Order, Plaintiff shall show cause why Defendant Clemente should not be dismissed due to Plaintiff's failure to provide the Marshal with information sufficient to effect timely service of the summons and complaint, and
- The failure to respond to this Order or the failure to show cause will result in the dismissal of Defendant Clemente without prejudice.

IT IS SO ORDERED.

Dated: May 18, 2014

Isl Michael J. Seng
UNITED STATES MAGISTRATE JUDGE