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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BRYAN E. RANSOM,
Plaintiff,

v.

DEPARTMENT OF CORRECTIONS AND
REHABILITATION, et al.,
Defendants.

Case No. 1: 11-cv-00068-AWI-MJS (PC)

ORDER REQUIRING PLAINTIFF TO
SHOW CAUSE WHY DEFENDANTS
GREAVES AND COREA SHOULD NOT
BE DISMISSED PURSUANT TO RULE
4(M)

(ECF No. 34)

Plaintiff is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action brought pursuant to 28 U.S.C. § 1983. The action proceeds against Defendants Greaves, Bondoc, Punt, Madina, Swingle, Neubarth, Corea and Dhah on Plaintiff's Eighth Amendment medical indifference claims. (ECF Nos. 21 & 26.)

Defendants Swingle and Neubarth waived service and made appearances in the action. (ECF Nos. 30, 31, & 32.) Defendant Dhah was personally served and has also made an appearance in the action. (ECF Nos. 36 & 37.) Defendant Punt waived service and has been ordered to show cause why default should not be entered. (ECF Nos. 33 & 39.) The Marshal has been ordered to re-direct service on Defendants

1 Bondoc and Madina. However, the Marshal was not able to locate Defendants Greaves
2 and Corea and service was returned un-executed on November 19, 2014. (ECF No.
3 34.)

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

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

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

26 At this juncture, the Marshal’s Office has exhausted the avenues available to it in
27 attempting to locate and serve Defendants Greaves and Corea.¹ Plaintiff shall be
28 provided with an opportunity to show cause why Defendants Greaves and Corea should
not be dismissed. Fed. R. Civ. P. 4(m). If Plaintiff either fails to respond to this order or

¹ The Marshal’s Office sought assistance from the prison and the Special Investigator for the California Department of Corrections and Rehabilitation. (ECF No. 34.)

1 responds but fails to show cause, Defendants Greaves and Corea shall be dismissed
2 from this action.

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

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

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10 IT IS SO ORDERED.

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Dated: March 4, 2015

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

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