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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)

FINDINGS AND RECOMMENDATION TO
DISMISS DEFENDANTS GREAVES AND
COREA FOR INSUFFICIENT
INFORMATION TO EFFECT SERVICE OF
PROCESS

(ECF No. 43.)

FOURTEEN (14) DAY OBJECTION
DEADLINE

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 claim. (ECF Nos. 21 & 26.)

The United States Marshal was ordered to initiate service of process on May 16, 2014. (ECF No. 28.) The Marshal was not able to locate Defendants Greaves and Corea and the summons was returned unexecuted on November 19, 2014. (ECF No.

1 34.) The Marshal's Office sought assistance from the prison and the Special Investigator
2 for the California Department of Corrections and Rehabilitation but was still unable to
3 locate Defendants Greaves and Corea. (ECF No. 34.) On March 5, 2015, the Court
4 ordered Plaintiff to show cause why Defendants Greaves and Corea should not be
5 dismissed for his failure to provide the Marshal with accurate and sufficient information to
6 effect service of process. (ECF No. 43.)

7 Plaintiff has failed to respond to the Order to Show Cause, and the time period to
8 do so has passed.

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

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

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

28 Despite Plaintiff presumably having provided all information he has regarding

1 Defendants Greaves and Corea and their whereabouts, the Marshal has been unable to
2 effect service of process upon them. Absent additional information about said
3 Defendants' whereabouts, further attempts at service would be futile, and it appears that
4 no further information will be forthcoming.

5
6 Plaintiff has not offered any explanation why he has not and cannot provide
7 information sufficient to effect service of process upon Defendants Greaves and Corea.
8 The obligation to do so is on Plaintiff, not Defendants. *Walker*, 14 F.3d at 1422.

9 Accordingly, for the reasons stated, the undersigned finds that the avenues
10 available to locate and serve Defendants Greaves and Corea have been exhausted and
11 recommends that Defendants Greaves and Corea be dismissed from this action without
12 prejudice.

13
14 These Findings and Recommendation are submitted to the United States District
15 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within
16 **fourteen** (14) days after being served with these Findings and Recommendation, any
17 party may file written objections with the Court and serve a copy on all parties. Such a
18 document should be captioned "Objections to Magistrate Judge's Findings and
19 Recommendations." Any reply to the objections shall be served and filed within
20 **fourteen** (14) days after service of the objections. The parties are advised that failure to
21 file objections within the specified time may result in the waiver of rights on appeal.

22
23 *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (*citing Baxter v. Sullivan*, 923
24 F.2d 1391, 1394 (9th Cir. 1991)).

25 IT IS SO ORDERED.

26
27 Dated: April 25, 2015

28 /s/ Michael J. Seng
3 UNITED STATES MAGISTRATE JUDGE