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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 MUHAMMAD NURIDDIN,) Case No.: 1:11-cv-01448-SAB (PC)
12)
13 Plaintiff,)
14 v.) ORDER TO SHOW CAUSE REGARDING
15 ESTRELLA, et al.,) SERVICE OF PROCESS UPON DEFENDANTS
16 Defendants.) BELL AND MILLER
) [ECF Nos. 20, 21]
)
)
)

17 Plaintiff Muhammad Nuriddin is appearing pro se and in forma pauperis in this civil rights
18 action pursuant to Bivens v. Six Unknown Agents, 403 U.S. 388 (1971). Bivens actions and actions
19 under 42 U.S.C. § 1983 “are identical save for the replacement of a state actor under § 1983 by a
20 federal actor under Bivens.” Van Strum v. Lawn, 940 F.2d 406, 409 (9th Cir. 1991). Pursuant to 28
21 U.S.C. § 636(c), Plaintiff consented to the jurisdiction of the United States Magistrate Judge on
22 September 7, 2011. Local Rule 302.

23 This action is proceeding against Defendants Miller, Rios, and Bell for retaliation in violation
24 of the First Amendment. The United States Marshal have not been able to serve Defendants Miller
25 and Bell.¹

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28 ¹ The service of process as to Defendant Rios is addressed by separate order.

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

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

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

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

20 **I. Defendant Lieutenant Timothy Miller**

21 On August 8, 2014, personal service was attempted but not successful. (Id.)

22 In this instance, the last known address provided by the prison is no longer accurate and
23 personal service has not been successful. Plaintiff shall be provided with an opportunity to show
24 cause why Defendant Miller should not be dismissed. Fed. R. Civ. P. 4(m).

25 **II. Defendant Assistant Warden John Bell**

26 With regard to Defendant Bell, personal service was affected on August 8, 2014. The Human
27 Resources Department at the United States Penitentiary in Atwater reported that Assistant Warden
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1 John Bell died on May 14, 2012.² (ECF No. 20.)

2 Plaintiff shall be provided with an opportunity to show cause why Defendant Bell should not
3 be dismissed. Fed. R. Civ. P. 4(m). If Plaintiff either fails to respond to this order or responds but
4 fails to show cause, Defendants Miller and Bell shall be dismissed from this action.

5 Based on the foregoing,

6 IT IS HEREBY ORDERED that:

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

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13 IT IS SO ORDERED.

14 Dated: **October 1, 2014**


UNITED STATES MAGISTRATE JUDGE

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25 ² Rule 25 of the Federal Rules of Civil Procedure provides:

26 If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A
27 motion for substitution may be made by any party or by the decedent's successor or representative. If the
28 motion is not made within 90 days after service of a statement noting the death, the action by or against
the decedent must be dismissed.

Fed. R. Civ. P. 25(a)(1).