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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

WILLIAM THOMAS COATS,

Plaintiff,

v.

CHAUDHRI, et al.,

Defendants.

Case No. 1:13-cv-02032-AWI-BAM (PC)

ORDER DISCHARGING JANUARY 22, 2018
ORDER TO SHOW CAUSE (ECF No. 67)

SECOND ORDER DIRECTING SERVICE OF
PROCESS BY UNITED STATES MARSHAL
ON DEFENDANTS CONVALECER AND
GUNDRAN

Plaintiff William Thomas Coats (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action under 42 U.S.C. § 1983.

On November 6, 2017, the Court ordered the United States Marshal to initiate service of process in this action upon Defendants Convalecer, Fairchild, Gladden, Gundren, and Nguyen. (ECF No. 57.) However, the Marshal was unable to locate Defendants Convalecer and Gundran and service was returned unexecuted for these defendants on January 11, 2018. The returns of service for both defendants indicate that the Marshal sent waivers via Fedex on November 13, 2017, and on January 11, 2018 was informed that they were unable to serve the defendants, and no forwarding information was available from the institution. (ECF Nos. 63, 64.)

On January 22, 2018, the Court issued an order for Plaintiff to show cause why Defendants Convalecer and Gundran should not be dismissed from this action under Federal Rule of Civil Procedure 4(m) for failure effectuate service. (ECF No. 67.) On February 2, 2018,

1 Plaintiff responded, contending that he provided sufficient information for service and believes
2 that the California Department of Corrections and Rehabilitation and Corcoran State Prison have
3 information regarding Defendants' last known addresses or contact information. (ECF No. 69.)

4 Federal Rule of Civil Procedure 4(m) provides as follows:

5 If a defendant is not served within 90 days after the complaint is filed, the court—
6 on motion or on its own after notice to the plaintiff—must dismiss the action
7 without prejudice against that defendant or order that service be made within a
8 specified time. But if the plaintiff shows good cause for the failure, the court
must extend the time for service for an appropriate period.

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

10 In cases involving a plaintiff proceeding in forma pauperis, the Marshal, upon order of the
11 court, shall serve the summons and the complaint. Fed. R. Civ. P. 4(c)(3). A pro se litigant
12 proceeding in forma pauperis is entitled to rely on the U.S. Marshal for service of the summons
13 and complaint. See, e.g., Puett v. Blandford, 912 F.2d 270, 275 (9th Cir. 1990). Accordingly,
14 delays or failures to effectuate service attributable to the Marshal are “automatically good cause
15 within the meaning of Rule 4[m].” Walker v. Sumner, 14 F.3d 1415, 1422 (9th Cir. 1994),
16 abrogated on other grounds by Sandin v. Connor, 515 U.S. 472 (1995) (citation omitted).
17 However, where a pro se plaintiff fails to provide the Marshal with accurate and sufficient
18 information to effect service of the summons and complaint, the Court’s sua sponte dismissal of
19 the unserved defendant is appropriate. Walker, 14 F.3d at 1421-22.

20 Having considered Plaintiff’s response to the show cause order, the Court finds that
21 Plaintiff provided accurate and sufficient information to identify Defendants Convalecer and
22 Gundran, but that the Marshal was unable to serve these defendants only because they apparently
23 no longer work at Corcoran State Prison. However, the return of service form does not identify
24 the avenues the United States Marshal utilized, beyond sending the waivers via Fedex, in order to
25 attempt service on Defendants Convalecer and Gundran. The Court’s initial order directing
26 service by the United States Marshals Service expressly directed that if the litigation officer at the
27 institution was unable to assist in identifying and/or locating defendants, then the Marshals
28 service should contact the Legal Affairs Division of CDCR and request the assistance of a Special

1 Investigator. The Marshals Service also was directed to maintain the confidentiality of all
2 information provided by CDCR pursuant to the service order. (ECF No. 18.)

3 It is not apparent from the return of service form that the United States Marshals Service
4 contacted the Litigation Officer at Corcoran State Prison or the Legal Affairs Division of CDCR
5 prior to returning service unexecuted. The Court will direct the United States Marshal to attempt
6 re-service on Defendants Convalecer and Gundran and seek the assistance of the Legal Affairs
7 Division of CDCR in attempting to locate these defendants. See *Graham v. Satkoski*, 51 F.3d
8 710, 713 (7th Cir. 1995) (While a “state prison may be justifiably reluctant to provide employee
9 addresses to a prisoner ... due to security concerns, it hardly can claim the same reluctance in
10 providing the information to a federal law enforcement agency.”). If the privacy of a defendant’s
11 forwarding address can be preserved, then Plaintiff is entitled to rely on the United States
12 Marshal to effect service upon Defendants Convalecer and Gundran on his behalf. See *Puett*, 912
13 F.2d at 273. However, any forwarding addresses of Defendants Convalecer and Gundran shall
14 not appear on any USM-285 form, shall not be made available to Plaintiff under any
15 circumstances, and shall not be made part of this Court’s record. If the United States Marshal is
16 unable to locate Defendants Convalecer and Gundran, then the Marshal shall document on the
17 USM-285 forms all avenues that were exhausted in attempting to locate these defendants.

18 Accordingly, the Marshal is **HEREBY DIRECTED** to attempt re-service on Defendants
19 Convalecer and Gundran. Pursuant to Federal Rule of Civil Procedure 4(c), it is **HEREBY**
20 **ORDERED** that:

- 21 1. The Court’s January 22, 2018, order to show cause, (ECF No. 67), is **DISCHARGED**;
- 22 2. The Clerk of the Court is directed to forward a copy of the following documents to the
23 United States Marshal:
 - 24 a. Two copies of the complaint filed on December 12, 2013 (ECF No. 1), plus an
25 extra copy for the Marshals Service;
 - 26 b. Two copies of this order, plus an extra copy for the Marshals Service;
 - 27 c. A copy of the USM-285 form as to Defendant Convalecer, (ECF No. 63);
 - 28 d. A copy of the USM-285 form as to Defendant Gundran (ECF No. 64); and

1 3. Within ten days from the date of this order, the Marshals Service is directed to notify
2 the following Defendants of the commencement of this action and to request a waiver
3 of service in accordance with the provisions of Fed. R. Civ. P. 4(d) and 28 U.S.C.

4 § 566(c):

5 **a. RN A. Gundran**

6 **b. Dr. Convalecer**

7 4. The Marshals Service is directed to retain the summonses and a copy of the complaint
8 in its file for future use.

9 5. The Marshals Service shall file returned waivers of service as well as any requests for
10 waivers of service that are returned as undelivered as soon as they are received.

11 6. If a waiver of service is not returned by either defendant within sixty (60) days of the
12 date of mailing the request for waiver, the Marshals Service shall:

13 a. Personally serve process and a copy of this order upon that defendant pursuant
14 to Rule 4 of the Federal Rules of Civil Procedure and 28 U.S.C. § 566(c), and
15 shall command all necessary assistance from CDCR to execute this order. The
16 Marshals Service shall maintain the confidentiality of all information provided
17 by the CDCR pursuant to this order. In executing this order, the Marshals
18 Service shall contact the Litigation Officer at Corcoran State Prison or the
19 Legal Affairs Division of CDCR and request the assistance of a Special
20 Investigator if the Litigation Office at the institution is unable to assist in
21 identifying and/or locating either defendant.

22 b. Within ten days after personal service is effected, the Marshals Service shall
23 file the return of service for the defendant(s), along with evidence of any
24 attempts to secure a waiver of service of process and of the costs subsequently
25 incurred in effecting service on said defendant(s). Said costs shall be
26 enumerated on the USM-285 form and shall include the costs incurred by the
27 Marshals Service for photocopying additional copies of the summons and
28 complaint and for preparing new USM-285 forms, if required. Costs of service

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will be taxed against the personally served defendant(s) in accordance with the provisions of Fed. R. Civ. P. 4(d)(2).

7. If defendants waive service, they are required to return the signed waivers to the Marshals Service. The filing of an answer or a responsive motion does not relieve the defendants of this requirement, and the failure to return the signed waivers may subject defendants to an order to pay the costs of service pursuant to Fed. R. Civ. P. 4(d)(2).

IT IS SO ORDERED.

Dated: February 9, 2018

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE