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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARK S. SOKOLSKY,
Plaintiff,
vs.
STATE OF CALIFORNIA, et al.,
Defendants.

1:13-cv-02044-LJO-GSA-PC
ORDER FOR PLAINTIFF TO SHOW
CAUSE WHY DEFENDANT REBECCA
DOMRESE SHOULD NOT BE DISMISSED
FROM THIS ACTION FOR FAILURE TO
EFFECT SERVICE
TWENTY-DAY DEADLINE

I. RELEVANT PROCEDURAL HISTORY

Mark S. Sokolsky (“Plaintiff”) is a civil detainee proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on January 11, 2011. (ECF No. 1.) This case now proceeds with Plaintiff’s Second Amended Complaint, filed on February 4, 2016, against defendants Rebecca Domrese, Audrey King, Daniel Meek, Jeannie Porter, and Isaac Bonsu (“Defendants”) for denial of free exercise of religion under the First Amendment and violation of RLUIPA; and defendants Domrese, King, Porter, and Bonsu for violation of due process based on conditions of confinement. (ECF No. 30.)

1 On December 23, 2016, Plaintiff filed a motion for summary judgment. (ECF No. 61.)
2 On March 30, 2017, defendants Meek, Bonsu, King, Coyne,¹ and Porter filed a motion for
3 summary judgment or partial summary judgment. (ECF No. 68.) These two motions are
4 pending.

5 On June 29, 2017, the court received notice from the United States Marshal (“Marshal”)
6 that the Marshal was unable to locate defendant Rebecca Domrese for service of process. The
7 Marshal reported that Rebecca Domrese is no longer a state employee and they have no
8 forwarding information.

9 **II. SERVICE BY UNITED STATES MARSHAL**

10 Pursuant to Rule 4(m),

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

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

17 In cases involving a plaintiff proceeding *in forma pauperis*, the Marshal, upon order of
18 the court, shall serve the summons and the complaint. Fed. R. Civ. P. 4(c)(3). “[A]n
19 incarcerated *pro se* plaintiff proceeding *in forma pauperis* is entitled to rely on the U.S.
20 Marshal for service of the summons and complaint and . . . should not be penalized by having
21 his action dismissed for failure to effect service where the U.S. Marshal or the court clerk has
22 failed to perform his duties.” Walker v. Sumner, 14 F.3d 1415, 1422 (9th Cir. 1994) (quoting
23 Puett v. Blandford, 912 F.2d 270, 275 (9th Cir. 1990)), abrogated on other grounds by Sandin
24 v. Connor, 515 U.S. 472 (1995). “So long as the prisoner has furnished the information
25 necessary to identify the defendant, the marshal’s failure to effect service is ‘automatically
26 good cause’” Walker, 14 F.3d at 1422 (quoting Sellers v. United States, 902 F.2d 598,
27 603 (7th Cir.1990)). However, where a *pro se* plaintiff fails to provide the Marshal with

28 ¹ Defendant Christine Coyne was dismissed from this case on May 25, 2016. (ECF No. 39.)

1 accurate and sufficient information to effect service of the summons and complaint, the court's
2 *sua sponte* dismissal of the unserved defendants is appropriate. Walker, 14 F.3d at 1421-22.

3 **Background**

4 On September 17, 2015, the court issued an order directing the Marshal to initiate
5 service of process upon defendant Rebecca Domrese in this action. (ECF No. 20.) On June 29,
6 2017, the court received notice from the Marshal that the Marshal was unable to locate
7 defendant Rebecca Domrese for service of process using the address provided by Plaintiff.
8 The Marshal also reported that Rebecca Domrese is no longer a state employee and they have
9 no forwarding information.

10 Pursuant to Rule 4(m), the court will provide Plaintiff with an opportunity to show
11 cause why defendant Rebecca Domrese should not be dismissed from the action at this time for
12 inability to serve process. Plaintiff has not provided sufficient information to locate defendant
13 Rebecca Domrese for service of process. The Marshal has attempted to locate this defendant at
14 the address provided by Plaintiff, without success. If Plaintiff is unable to provide the Marshal
15 with additional information, defendant Rebecca Domrese shall be dismissed from the action.

16 **III. CONCLUSION**

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

- 18 1. Within **twenty (20) days** from the date of service of this order, Plaintiff shall
19 show cause why defendant Rebecca Domrese should not be dismissed from this
20 action pursuant to Rule 4(m); and
21 2. Plaintiff's failure to respond to this order or failure to show cause may result in
22 the dismissal of this action.

23
24 IT IS SO ORDERED.

25 Dated: July 7, 2017

26 /s/ Gary S. Austin
27 UNITED STATES MAGISTRATE JUDGE
28