

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

QUINCY SIMS,
Plaintiff,
v.
C. WEGMAN; C. BOWMAN; M.
SEAMAN; AND C. HAMMOND,
Defendants.

Case No. 1:14-cv-00415-EPG (PC)
**ORDER FOR PLAINTIFF TO SHOW
CAUSE WHY CASE SHOULD NOT BE
DISMISSED WITHOUT PREJUDICE
FOR PLAINTIFF'S FAILURE TO
EFFECT SERVICE
(ECF NO. 15.)**
THIRTY DAY DEADLINE

I. RELEVANT PROCEDURAL HISTORY

Plaintiff, Quincy Sims, is a prisoner in the custody of the California Department of Corrections and Rehabilitation (“CDCR”). Plaintiff is 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 March 24, 2014. (ECF No. 1.). This action now proceeds on the First Amended Complaint filed on March 10, 2015, against defendant C. Bowman (Chaplain) on Plaintiff’s Religious Land Use and Institutionalized Persons Act of 2000 and First Amendment free exercise claims. (ECF Nos. 8 & 12.).

On June 7, 2016, the Court issued an order directing the United States Marshal (“Marshal”) to serve process upon defendant C. Bowman. (ECF No. 14.) On September 16,

1 2016, the Marshal filed a return of service unexecuted, indicating that the Marshal was unable
2 to locate defendant Cohen for service of process. (ECF No. 15.)

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

4 Pursuant to Rule 4(m),

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
9 must extend the time for service for an appropriate period.

10 Fed. R. Civ. P. 4(m).¹

11 In cases involving a plaintiff proceeding *in forma pauperis*, the Marshal, upon order of
12 the Court, shall serve the summons and the complaint. Fed. R. Civ. P. 4(c)(2). “[A]n
13 incarcerated pro se plaintiff proceeding *in forma pauperis* is entitled to rely on the U.S.
14 Marshal for service of the summons and complaint and ... should not be penalized by having
15 his action dismissed for failure to effect service where the U.S. Marshal or the court clerk has
16 failed to perform his duties.” Walker v. Sumner, 14 F.3d 1415, 1422 (9th Cir. 1994) (quoting
17 Puett v. Blandford, 912 F.2d 270, 275 (9th Cir. 1990)), *overruled on other grounds by Sandin*
18 *v. Connor*, 515 U.S. 472 (1995). “So long as the prisoner has furnished the information
19 necessary to identify the defendant, the marshal’s failure to effect service is ‘automatically good
20 cause’” Walker, 14 F.3d at 1422 (quoting Sellers v. United States, 902 F.2d 598, 603 (7th
21 Cir.1990)). However, where a *pro se* plaintiff fails to provide the Marshal with accurate and
22 sufficient information to effect service of the summons and complaint, the Court’s *sua sponte*
23 dismissal of the unserved defendants is appropriate. Walker, 14 F.3d at 1421-22.

24 **Background**

25 The return of service filed by the Marshal on September 16, 2016, indicates that,
26 according to the CDCR, defendant C. Bowman resigned, joined the army, and didn’t leave a
27 forwarding address. (ECF No. 15.) There is no indication on the return of service that the

28 ¹ Fed. R. Civ. P. 4(m) was amended in 2015 to reduce the time for serving a defendant from 120
days to 90 days. However, the time period to serve defendant C. Bowman has expired under both the pre-
amendment version of the rule and the current version rule.

1 Marshal received a response from defendant C. Bowman. (Id.) The Marshal certified that he
2 or she was unable to locate defendant C. Bowman. (Id.)

3 Pursuant to Rule 4(m), the Court will provide Plaintiff with an opportunity to show
4 cause why the case should not be dismissed for failure to serve process (the only remaining
5 defendant in the case, defendant C. Bowman, has not been served). Plaintiff has not provided
6 sufficient information to identify and locate defendant C. Bowman for service of process. If
7 Plaintiff is unable to provide the Marshal with additional information, the case shall be
8 dismissed.

9 **III. CONCLUSION**

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

- 11 1. Within **thirty (30) days** from the date of service of this order, Plaintiff shall
12 show cause why the case should not be dismissed without prejudice pursuant to
13 Rule 4(m).

14
15 IT IS SO ORDERED.

16 Dated: September 22, 2016

17 /s/ Eric P. Grogan
18 UNITED STATES MAGISTRATE JUDGE
19
20
21
22
23
24
25
26
27
28