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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ANTHONY TYRONE CAMPBELL, SR.,)	1:14-cv-00918-DAD-BAM (PC)
)	
Plaintiff,)	ORDER TO SHOW CAUSE WHY
)	DEFENDANT P. DICKEY SHOULD NOT
v.)	BE DISMISSED FROM THIS ACTION FOR
)	FAILURE TO PROVIDE SUFFICIENT
P. DICKEY,)	INFORMATION TO EFFECTUATE
)	SERVICE
Defendant.)	(ECF No. 31)
)	
)	THIRTY-DAY DEADLINE
)	
)	

I. Introduction

Plaintiff Anthony Tyrone Campbell, Sr., is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Following remand from the Ninth Circuit Court of Appeals, this action proceeds on Plaintiff’s second amended complaint for a violation of Plaintiff’s right to equal protection against Correctional Officer P. Dickey. This matter was referred to the undersigned pursuant to 28 U.S.C. § 636(1)(B) and Local Rule 302.

II. Service by the United States Marshall

On May 10, 2017, following the issuance of the mandate from the Ninth Circuit Court of Appeals, this Court issued an order directing the United States Marshal to initiate service of process in this action upon Defendant Dickey. (ECF No. 30.)

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1 On May 15, 2017, the United States Marshal filed a return of service unexecuted as to
2 Defendant Dickey. (ECF No. 31). The USM-285 form states that the Marshall contacted the
3 litigation coordinator at California Correctional Institution, Tehachapi, where Plaintiff indicated
4 Defendant Dickey could be served. The litigation coordinator reported that they do not have an
5 employee by that name, and the personnel department verified that they have no record of a “P.
6 Dickey.” (Id. at 1.)

7 **A. Legal Standards**

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

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

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

15 Where a pro se plaintiff fails to provide the Marshal with accurate and sufficient
16 information to effect service of the summons and complaint, the Court’s sua sponte dismissal of
17 the unserved defendant is appropriate. Walker v. Sumner, 14 F.3d 1415, 1421-22 (9th Cir.
18 1994), abrogated on other grounds by Sandin v. Connor, 515 U.S. 472, 115 S. Ct. 2293, 132 L.
19 Ed. 2d 418 (1995).

20 **B. Discussion**

21 In this case, Plaintiff has not provided accurate and sufficient information to identify
22 Defendant Dickey and to locate this defendant for service of process. If Plaintiff is unable to
23 provide the Marshal with the necessary information, this action shall be dismissed, without
24 prejudice. Under Rule 4(m), the court will provide Plaintiff with the opportunity to show cause
25 why Defendant Dickey should not be dismissed from the action at this time.

26 **III. Conclusion and Order**

27 Based on the foregoing, it is HEREBY ORDERED that:

28 1. Within **thirty (30) days** from the date of service of this order, Plaintiff shall show
cause why Defendant Dickey should not be dismissed from this action. Plaintiff may comply

1 with this order by providing accurate and sufficient information for the Marshal to identify and
2 locate Defendant Dickey for service of process; and

3 2. **The failure to respond to this order will result in the dismissal of this action.**

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5 IT IS SO ORDERED.

6 Dated: May 17, 2017

7 /s/ Barbara A. McAuliffe
8 UNITED STATES MAGISTRATE JUDGE
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