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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GORDON C. REID,
Plaintiff,
vs.
UNITED STATES OF AMERICA, et al.,
Defendants.

1:14-cv-01163-BAK (GSA)-PC
**ORDER FOR PLAINTIFF TO SHOW
CAUSE WHY DEFENDANT FENTON
AND DOE DEFENDANTS #1-3 SHOULD
NOT BE DISMISSED FROM THIS CASE
FOR FAILURE TO EFFECT SERVICE**
THIRTY-DAY DEADLINE

I. BACKGROUND

Gordon C. Reid (“Plaintiff”) is proceeding with counsel in this civil rights action brought pursuant to Bivens vs. Six Unknown Agents, 403 U.S. 388 (1971) and the Federal Tort Claims Act, 28 U.S.C §§ 1346(b), 2671-2680. Plaintiff filed the Complaint commencing this action on July 25, 2014. (ECF No. 1.)

II. SERVICE OF PROCESS

Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, “if a defendant is not served within 90 days after the complaint is filed, the court--on motion or on its own after notice

1 to the plaintiff--must dismiss the action without prejudice against that defendant or order that
2 service be made within a specified time. But if the plaintiff shows good cause for the failure, the
3 court must extend the time for service for an appropriate period.

4 **III. DISCUSSION**

5 On March 19, 2021, the court directed the Clerk of Court to issue summonses for service
6 of the third amended complaint upon each defendant named in the third amended complaint.
7 (ECF No. 97.) On March 22, 2021, the Clerk issued summonses as to defendants Fenton, Garcia,
8 J. Ontiveroz, and United States of America. (ECF No. 98.) On May 13, 2021, executed
9 summonses were returned to the court for defendants Garcia, J. Ontiveroz, and United States of
10 America. (ECF No. 99.) On June 15, 2021, defendants Garcia, J. Ontiveroz, and United States
11 of America filed an answer to the complaint. (ECF No. 101.)

12 On May 13, 2022, Plaintiff filed a Fourth Amended Complaing naming defendants
13 United States of America, Captain Ray Garcia, Lieutenant Robert Fenton, Jason Ontiveroz
14 (Prison Guard), and John Does Nos. 1-3 (Lieutenants). (ECF No. 132.)

15 Here, Plaintiff is proceeding against Doe Defendants Nos. 1-3 (Lieutenants of the Guard)
16 for subjecting Plaintiff to excessive force and unconstitutional conditions of confinement in
17 violation of the Eighth Amendment. However, these defendants have not been served with
18 process because Plaintiff has not sufficiently identified them to enable service of process. Service
19 cannot be initiated on unknown defendants. Plaintiff will need to seek leave to amend to
20 substitute the true names of the Doe defendants once he learns who they are. See Wakefield v.
21 Thompson, 177 F.3d 1160, 1163 (9th Cir. 1999); Merritt v. Los Angeles, 875 F.2d 765, 768 (9th
22 Cir. 1989); see Swartz v. Gold Dust Casino, Inc., 91 F.R.D. 543, 547 (D. Nev. 1981).

23 Moreover, the court finds no evidence on the court's record that defendant Fenton was
24 served with process, or otherwise appeared in this case.

25 This case has been pending for nearly nine years and the discovery phase has been open
26 since July 22, 2021. Therefore, Plaintiff shall be required to show cause why defendant Fenton
27 and Doe Defendants Nos. 1-3 should not be dismissed from this action.

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IV. ORDER TO SHOW CAUSE

Accordingly, based on the foregoing, **IT IS HEREBY ORDERED** that within **thirty (30) days** from the date of service of this order, Plaintiff shall show cause why defendant Fenton and Doe Defendants Nos. 1-3 should not be dismissed from this action pursuant to Rule 4(m).

IT IS SO ORDERED.

Dated: May 14, 2022

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE