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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JEREMIAH D. VICKERS,

Plaintiff,

v.

THOMPSON, et al.,

Defendants.

) Case No.: 1:15-cv-00129-SAB (PC)
)
) ORDER TO SHOW CAUSE WHY
) DEFENDANT O’NEIL SHOULD NOT BE
) DISMISSED FROM THIS ACTION FOR
) FAILURE TO PROVIDE SUFFICIENT
) INFORMATION TO EFFECTUATE
) SERVICE
)
) (ECF No. 66)
)
) **THIRTY-DAY DEADLINE**
)
)

Plaintiff Jeremiah D. Vickers (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. All parties who have appeared have consented to the jurisdiction of a United States Magistrate Judge, (ECF Nos. 8, 40, 65), but service has not been completed on Defendant O’Neil.

I.

BACKGROUND

On November 22, 2016, the Court granted in part Plaintiff’s motion requesting intervention for service of the summons on Defendant O’Neil. (ECF No. 53.) Previously, the United States Marshal had indicated that service could not be completed on Defendant O’Neil at the Tulare County Sheriff’s Department because that Defendant was no longer employed by Tulare County. The Court directed defense counsel, who is the Tulare County Counsel, to confidentially provide a forwarding address for Defendant O’Neil to the Marshal, so that the

1 Marshal could re-attempt service at the forwarding address. On November 30, 2016, defense
2 counsel filed a notice indicating that she complied with the Court’s order. (ECF No. 55.)¹

3 On December 1, 2016, the Court issued a second order directing service of process on
4 Defendant O’Neil by the Marshal with the information provided by defense counsel. (ECF No.
5 57.)

6 On May 18, 2017, the United States Marshal filed a return of service unexecuted as to
7 Defendant O’Neil. (ECF No. 66). The USM-285 form states that the Marshall made an attempt at
8 service on May 2, 2017, at the confidential address provided by defense counsel. On May 3,
9 2017, the Marshal received a phone call from the owner of the residence where the attempt at
10 service was made. The owner informed the Marshal that Defendant O’Neil no longer lives at that
11 residence.

12 II.

13 DISCUSSION

14 A. Legal Standards

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

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

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

21 Where a pro se plaintiff fails to provide the Marshal with accurate and sufficient
22 information to effect service of the summons and complaint, the Court’s sua sponte dismissal of
23 the unserved defendant is appropriate. Walker v. Sumner, 14 F.3d 1415, 1421-22 (9th Cir.
24 1994), abrogated on other grounds by Sandin v. Connor, 515 U.S. 472, 115 S. Ct. 2293, 132 L.
25 Ed. 2d 418 (1995).

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27 _____
28 ¹ The same process was undertaken for Defendant Sandoval, who has since returned a waiver of service.
(ECF No. 63.)

