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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ROBERTO R. RECINO,
Plaintiff,
v.
UNKNOWN, et al.,
Defendants.

Case No. 1:15-cv-00362-LJO-BAM (PC)
FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSAL OF DOE
DEFENDANTS AND DISMISSAL OF
ACTION
(ECF No. 49)
FOURTEEN (14) DAY DEADLINE

Plaintiff Roberto R. Recino (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff’s third amended complaint against two unknown correctional officers for failing to intercede as Plaintiff was beaten by other inmates, and for delaying in obtaining medical treatment for him after the beating, in violation of the Eighth Amendment.

I. Background

On July 27, 2016, the Court found service of Plaintiff’s third amended complaint appropriate and directed Plaintiff to provide, within forty-five (45) days, a motion to substitute the identities of the Doe Defendants or a status report indicating the actions he took to locate their names. (ECF No. 33.)

Following a series of motions to compel and for issuance of a subpoena, on September 13, 2017, the Court granted in part Plaintiff’s motion for issuance of a subpoena duces tecum

1 directing the Warden of California State Prison, Corcoran, to produce any and all medical reports
2 relating to Plaintiff, from April 2004 to August 2004. (ECF No. 46.) The subpoena was returned
3 executed on September 20, 2017. (ECF No. 48.)

4 After receiving no communication from Plaintiff, on April 17, 2018, the Court issued an
5 order directing Plaintiff, within thirty (30) days, to provide the Court with written notice
6 identifying Doe Defendants with enough information to locate them for service of process, or to
7 show cause why the Doe Defendants should not be dismissed for failure to prosecute. (ECF No.
8 49.) Plaintiff was warned that failure to comply with the Court’s order would result in dismissal
9 of Doe Defendants from this action, and the closure of this action without further notice. More
10 than thirty days have passed, and Plaintiff has failed to respond to the Court’s order or to
11 otherwise communicate with the Court.

12 II. Discussion

13 Pursuant to Federal Rule of Civil Procedure 4(m):

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

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

19 In cases involving a plaintiff proceeding *in forma pauperis*, a United States Marshal, upon
20 order of the court, shall serve the summons and the complaint. Fed. R. Civ. P. 4(c)(3). “[A]
21 prisoner ‘is entitled to rely on the U.S. Marshal for service’ . . . as long as he or she ‘provide[s]
22 the necessary information to help effectuate service.’” Schrubb v. Lopez, 617 Fed. Appx. 832,
23 832 (9th Cir. 2015) (quoting Puett v. Blandford, 912 F.2d 270, 275 (9th Cir. 1990), abrogated on
24 other grounds by Sandin v. Connor, 515 U.S. 472 (1995)). “So long as the prisoner has furnished
25 the information necessary to identify the defendant, the marshal’s failure to effect service is
26 ‘automatically good cause’” Walker v. Sumner, 14 F.3d 1415, 1422 (9th Cir. 1994) (quoting
27 Sellers v. United States, 902 F.2d 598, 603 (7th Cir. 1990)), overruled on other grounds by
28 Sandin, 515 U.S. at 483–84. However, where a *pro se* plaintiff fails to provide the Marshal with

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 Plaintiff has been granted multiple opportunities to provide sufficient information to
4 identify the Doe Defendants so the United States Marshal may serve the summons and complaint.
5 Despite the Court's warning that failure to do so would result in dismissal of the Doe Defendants
6 from this action, and closure of this action, Plaintiff has not complied with the Court's orders or
7 otherwise communicate with the Court.

8 **III. Conclusion and Recommendation**

9 Plaintiff has failed to provide sufficient information to identify the Doe Defendants so the
10 United States Marshal may serve the summons and complaint. In addition, Plaintiff has failed to
11 set forth good cause for his failure to identify the Doe Defendants. Accordingly, the Court
12 HEREBY RECOMMENDS that all Doe Defendants be dismissed and this action closed, without
13 prejudice, pursuant to Federal Rule of Civil Procedure 4(m).

14 These Findings and Recommendations will be submitted to the United States District
15 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
16 **fourteen (14) days** after being served with these Findings and Recommendations, Plaintiff may
17 file written objections with the Court. The document should be captioned "Objections to
18 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
19 objections within the specified time may result in the waiver of the "right to challenge the
20 magistrate's factual findings" on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir.
21 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

22
23 IT IS SO ORDERED.

24 Dated: May 29, 2018

25 /s/ Barbara A. McAuliffe
26 UNITED STATES MAGISTRATE JUDGE
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