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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

JOSE LOPEZ HERNANDEZ,  
  
  Plaintiff,  
  
                v.  
  
FEDERAL BUREAU OF PRISONS, et al.,  
  
  Defendants.

Case No. 1:15-cv-00573-BAM (PC)  
  
**ORDER DISCHARGING ORDER TO SHOW CAUSE, AND DIRECTING PLAINTIFF TO COMPLETE SERVICE OF PROCESS WITHIN SIXTY DAYS**  
  
(ECF No. 29)  
  
**SIXTY (60) DAY DEADLINE**

Plaintiff Jose Lopez Hernandez (“Plaintiff”) is a former federal prisoner proceeding pro se in this civil rights action under Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971). This action proceeds against Defendants H.A. Rios, Jr.; Saragosh; and Estrada (“Defendants”) for the failure to protect Plaintiff in violation of the Eighth Amendment. (ECF Nos. 18, 19.)

On August 18, 2016, the Court issued an order finding service of the complaint appropriate, and directing Plaintiff to complete service of process on Defendants Rios, Saragosh, and Estrada within ninety (90) days from the date of service of that order. (ECF No. 20.) On October 24, 2016, Plaintiff filed with the Court a notice of submission of summons as to each Defendant. (ECF No. 24.) However, upon review of those documents, the Court discovered that Plaintiff had been mistakenly sent blank summonses. Accordingly, on December 19, 2016, the Court ordered the Clerk of the Court to mail Plaintiff issued summonses and gave Plaintiff ninety

1 (90) days to complete re-service with the newly issued summonses. (ECF No. 25.)

2 Plaintiff failed to timely file with the Court proofs of service or signed waivers of service  
3 for any defendant. On May 1, 2017, the Court issued an order to show cause why this action  
4 should not be dismissed for failure to prosecute pursuant to Federal Rule of Civil Procedure 4(m).  
5 (ECF No. 29.)

6 On May 26, 2017, Plaintiff timely filed a response to the Court's order to show cause.  
7 (ECF No. 30.) Plaintiff states that on March 6, 2017, his process server delivered to each  
8 defendant: a copy of the complaint filed March 20, 2015; "Notice of lawsuit and request to  
9 Waiver Service for Summons" form; Waiver of Service form; Rule 4 of the Federal Rules of  
10 Civil Procedure; Copy of the Court Order; and a stamped self-addressed envelope. Plaintiff  
11 attached returns of service and declarations by the process server, with tracking information,  
12 showing that a package addressed to each Defendant was delivered to P.O. Box 019001 at USP  
13 Atwater. (Id. at 3-13.) Plaintiff further states that Defendants have failed to return the Waiver of  
14 Service of Summons forms to him.

15 Plaintiff must make proof of service to the Court. Fed. R. Civ. P. 4(l). This requires  
16 either that he file an executed Waiver of Service of Summons form, or proof of personal service,  
17 for each Defendant. Fed. R. Civ. P. 4(d)(4), (l)(1).

18 As it appears Plaintiff's process server mailed his packages to USP Atwater, he may wish  
19 to contact the Litigation Coordinator at that institution using the telephone number or email  
20 address given on the docket to determine whether his packages were received by any of the  
21 Defendants. According to the docket for this case, the Litigation Coordinator for USP Atwater  
22 can be reached at (209) 386-0257 or atw/attorney~@bop.gov.

23 As was previously explained to Plaintiff, if any Defendant fails to return the Waiver of  
24 Service of Summons form to him, he must have personal service effected on Defendants. (See  
25 ECF No. 25, p. 3.) The summons and a copy of the complaint must be personally served on each  
26 Defendant (*not the Attorney General's Office or any other governmental entity*). Plaintiff may  
27 not effect personal service himself. Fed. R. Civ. P. 4(c)(2). Service may be effected by any  
28 person who is not a party to this action and who is at least eighteen years old. Id.

1 Plaintiff is reminded that he should review Federal Rule of Civil Procedure 4(e), which  
2 addresses the different ways personal service may be effected. As noted above, after personal  
3 service is effected on Defendants, Plaintiff must file proofs of service with the Court. Fed. R.  
4 Civ. P. 4(l).

5 Accordingly, the Court HEREBY ORDERS as follows:

- 6 1. The Court's May 1, 2017 order to show cause (ECF No. 29) is HEREBY  
7 DISCHARGED;
- 8 2. The Clerk of the Court is directed to send Plaintiff a copy of Rule 4 of the Federal  
9 Rules of Civil Procedure;
- 10 3. Plaintiff shall complete service of process on Defendants H.A. Rios, Jr; Saragosh; and  
11 Estrada within **sixty (60) days** from the date of service of this order; and
- 12 4. **Unless good cause is shown, Plaintiff's failure to timely complete service of**  
13 **process on the Defendants and to file proofs of service with the Court will result**  
14 **in dismissal of this action. Fed. R. Civ. P. 4(m).**

15 IT IS SO ORDERED.

16 Dated: June 12, 2017

17 /s/ Barbara A. McAuliffe  
18 UNITED STATES MAGISTRATE JUDGE