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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RASHAD KING,
Plaintiff,
v.
S. HOLLAND, et al.,
Defendants.

Case No. 1:15-cv-01885-BAM (PC)

**ORDER TO SHOW CAUSE WHY
DEFENDANT SOLIS SHOULD NOT BE
DISMISSED FROM THIS ACTION FOR
FAILURE TO PROVIDE SUFFICIENT
INFORMATION TO EFFECTUATE
SERVICE**

THIRTY (30) DAY DEADLINE

I. Introduction

Plaintiff Rashad King (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action under 42 U.S.C. § 1983. This action proceeds on Plaintiff’s complaint, filed on December 18, 2015, for violations of the Eighth Amendment against Defendants Holland and Duncan for excessive force during the first escort; against Defendants Holland, Duncan, and Solis for excessive force in the second cell; against Defendant Tingley for failing to intervene in the attack by Defendants Holland, Solis, and Duncan in the second cell; and an Eighth Amendment sexual assault against Defendant Holland.

II. Service by the United States Marshal

On December 22, 2016, the Court ordered the United States Marshal to initiate service of process in this action upon Defendants Holland, Duncan, Solis, and Tingley. (ECF No. 18.) However, the Marshal was unable to locate Defendant Solis and service was returned unexecuted for this defendant on January 26, 2017. (ECF No. 21.)

1 On January 27, 2017, the Court issued an order for Plaintiff to show cause why Defendant
2 Solis should not be dismissed from this action under Federal Rule of Civil Procedure 4(m) for
3 failure to effectuate service. (ECF No. 22.) On February 27, 2017, Plaintiff filed a response to
4 the show cause order. Plaintiff requested that Defendant Solis not be dismissed from this action,
5 contending that he provided sufficient information for service and that he was unaware of the
6 termination of Defendant Solis. Plaintiff believed that CDCR or CCI State Prison had
7 information of the last known address or contact information for Defendant Solis. (ECF No. 23.)
8 On March 6, 2017, in light of Plaintiff's response, the Court discharged the order to show cause
9 and issued a second order directing the United States Marshal to serve Defendant Solis. (ECF
10 Nos. 24, 25.)

11 On April 7, 2017, service was again returned unexecuted. The Marshal explained that
12 CDCR was contacted for the last known contact information of Defendant Solis, but the
13 telephone number provided was incorrect, and the waiver packet mailed to the last known address
14 for Defendant Solis was returned to sender. The Marshal also indicated that CDCR no longer
15 employs an investigator who can assist in locating defendants. (ECF No. 33.)

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

17 If a defendant is not served within 90 days after the complaint is filed, the court—on
18 motion or on its own after notice to the plaintiff—must dismiss the action without
19 prejudice against that defendant or order that service be made within a 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 In cases involving a plaintiff proceeding in forma pauperis, the Marshal, upon order of the
22 court, shall serve the summons and the complaint. Fed. R. Civ. P. 4(c)(3). A pro se litigant
23 proceeding in forma pauperis is entitled to rely on the U.S. Marshal for service of the summons
24 and complaint. See, e.g., Puett v. Blandford, 912 F.2d 270, 275 (9th Cir. 1990). Accordingly,
25 delays or failures to effectuate service attributable to the Marshal are “automatically good cause
26 within the meaning of Rule 4[m].” Walker v. Sumner, 14 F.3d 1415, 1422 (9th Cir. 1994),
27 abrogated on other grounds by Sandin v. Connor, 515 U.S. 472 (1995) (citation omitted).

28 However, where a pro se plaintiff fails to provide the Marshal with accurate and sufficient

1 information to effect service of the summons and complaint, the Court's sua sponte dismissal of
2 the unserved defendant is appropriate. Walker, 14 F.3d at 1421-22.

3 Here, the Marshal has exhausted all possible avenues for effecting service of process on
4 Defendant Solis using the information Plaintiff previously provided, but has not been able to
5 effect service. If Plaintiff is unable to provide the Marshal with additional information to locate
6 and serve Defendant Solis, then Defendant Solis shall be dismissed from this action, without
7 prejudice.

8 Pursuant to Rule 4(m), the Court will provide Plaintiff with the opportunity to show cause
9 why Defendant Solis should not be dismissed from this action at this time.

10 **III. Conclusion and Order**

11 Accordingly, the Court HEREBY ORDERS that:

- 12 1. Within **thirty (30) days** from the date of service of this order, Plaintiff shall show
13 cause why Defendant Solis should not be dismissed from this action. Plaintiff may
14 comply with this order by providing accurate and sufficient information for the
15 Marshal to identify and locate Defendant Solis for service of process; and
16 2. **The failure to respond to this order will result in the dismissal of Defendant Solis**
17 **from this action.**

18 IT IS SO ORDERED.
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20 Dated: April 12, 2017

21 /s/ Barbara A. McAuliffe
22 UNITED STATES MAGISTRATE JUDGE
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