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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JAMES MILLNER,

Plaintiff,

v.

DR. WOODS, et al.,

Defendants.

) Case No. 1:16-cv-01209-SAB-PC
)
) ORDER TO SHOW CAUSE WHY
) DEFENDANT HASHEM SHOULD NOT BE
) DISMISSED FROM THIS ACTION FOR
) FAILURE TO PROVIDE SUFFICIENT
) INFORMATION TO EFFECTUATE
) SERVICE
)
) (ECF No. 17)
)
) **THIRTY (30) DAY DEADLINE**
)

Plaintiff James Millner is proceeding pro se in this civil action pursuant to 42 U.S.C. § 1983.

**I.
BACKGROUND**

On June 5, 2017, the Court found service of the first amended complaint appropriate as to Defendants Woods and Hashem in this case. (ECF No. 9.) On June 6, 2017, the Court issued an order requiring Plaintiff to serve Defendants Woods and Hashem. (ECF No. 10.) Defendant Woods has since appeared and has filed an answer to the first amended complaint. (ECF No. 15.)

Plaintiff filed motions seeking service appointment of the U.S. Marshal to serve Defendant Hashem in this case, explaining that he had attempted to serve process by requesting service through the Kern County Sheriff’s Office, with no success. (ECF Nos. 11, 12.) On

1 August 24, 2017, the Court issued an order granting Plaintiff's motion, (ECF No. 13), and
2 ordering the U.S. Marshal to serve process on Defendant Hashem, (ECF No. 14.)¹ The Court had
3 information from Plaintiff that Defendant Hashem may no longer be employed at Kern Valley
4 State Prison, and therefore directed the Marshal to request a forwarding address for Defendant
5 Hashem, if necessary.

6 On August 29, 2017, the United States Marshal filed a return of service unexecuted as to
7 Defendant Hashem. (ECF No. 66). The USM-285 form states that the Marshall made an attempt
8 at service on August 25, 2017, at Kern Valley State Prison, using the information provided by
9 Plaintiff. The Marshal was informed that Dr. Hashem had retired from Kern Valley State Prison.
10 The Marshal was further informed that Dr. Hashem did not leave any forwarding address, and
11 has not respond to any phone calls from his former employer.

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
20 must extend the time for service for an appropriate period.

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

22 Where a pro se plaintiff fails to provide the Marshal with accurate and sufficient
23 information to effect service of the summons and complaint, the Court's sua sponte dismissal of
24 the unserved defendant is appropriate. Walker v. Sumner, 14 F.3d 1415, 1421-22 (9th Cir. 1994),
25 abrogated on other grounds by Sandin v. Connor, 515 U.S. 472, 115 S. Ct. 2293, 132 L. Ed. 2d
26 418 (1995).

27 ¹ Service of process by the U.S. Marshal was also ordered on Defendant Woods, but was vacated by this
28 Court's order (ECF No. 16), when Defendant Wood appeared and filed an answer to the first amended
complaint in this action.

1 **B. Analysis**

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

7 Under Rule 4(m), the court will provide Plaintiff with the opportunity to show cause why
8 Defendant Hashem should not be dismissed from the action at this time.

9 **III.**

10 **CONCLUSION**

11 Based on the foregoing, it is HEREBY ORDERED that:

12 1. Within **thirty (30) days** from the date of service of this order, Plaintiff shall show
13 cause why Defendant Hashem should not be dismissed from this action. Plaintiff may comply
14 with this order by providing accurate and sufficient information for the Marshal to identify and
15 locate Defendant Hashem for service of process; and

16 2. **The failure to respond to this order will result in the dismissal of Defendant**
17 **Hashem from this action.**

18
19 IT IS SO ORDERED.

20 Dated: **September 1, 2017**

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23 UNITED STATES MAGISTRATE JUDGE
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