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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JUAN MATIAS TORRES,
Plaintiff,
v.
CONNIE GIPSON, et al.,
Defendants.

CASE NO. 1:16-cv-1525-LJO-MJS (PC)
**ORDER REQUIRING PLAINTIFF TO
SHOW CAUSE WHY CERTAIN
DEFENDANT SHOULD NOT BE
DISMISSED**
THIRTY (30) DAY DEADLINE

Plaintiff is a state prisoner proceeding pro se in this civil rights action brought pursuant to 42 U.S.C. § 1983. (ECF No. 16.) The Court screened Plaintiff's First Amended Complaint and found that it stated a cognizable claim against Defendants D. Babineaux-Prince, R. Briggs, D. Case, R. Chavez, L. Clausell, T. Galaviz, Connie Gipson, C. Henderson, K. Matta, A. Mayo, J. C. Smith, C.R. Villarrial, D. Weaver, and L. Williams. (ECF No. 18.)

Service on Defendant Williams was returned unexecuted. (ECF No. 21.) In the remarks section of the USM-285, the Marshal wrote: "unable to locate subject L. Williams." (Id.)

The Court and the United States Marshal ("USM") have a statutory duty to serve process on Plaintiff's behalf. The response given by the Marshals Service was

1 insufficient to allow the Court to discharge this duty on the ground that the defendant
2 cannot be located. 28 U.S.C. 1915(d); Fed. R. Civ. P. 4(c)(3). Accordingly, the Court
3 ordered USM to re-attempt service on Defendant Williams. (ECF No. 22.)

4 On October 4, 2017, service on Defendant Williams was, again, returned
5 unexecuted. (ECF No. 23.) In the remarks section of the USM-285, the Marshal wrote:
6 "The office of [California Department of Corrections and Rehabilitation (CDCR)] was
7 contacted on 8-28-17. They made multiple attempts to locate this employee but have no
8 record of any employee by that name. They will not accept service and are unable to
9 provide any additional information. 10-4-2017 -- Additional attempts were made by all
10 departments at "1515" address - unable to locate." (Id.)

11 At this time, the Marshals Service has exhausted the avenues available to it to
12 locate and serve Defendant Williams. Walker v. Sumner, 14 F.3d 1415, 1421-22 (9th Cir.
13 1994). Accordingly, Plaintiff shall show cause why Defendant Williams should not be
14 dismissed. Fed. R. Civ. P. 4(m). If Plaintiff either fails to respond to this order or
15 responds but fails to show cause, the Court will recommend that Defendant Williams be
16 dismissed from the action

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

- 18 1. Within **thirty (30) days** from the date of service of this order, Plaintiff shall
19 show cause why Defendant Williams should not be dismissed from this
20 action; and
- 21 2. If Plaintiff fails to respond to this order or fails to show cause, the Court will
22 recommend that Defendant Williams be dismissed from this action.

23
24 IT IS SO ORDERED.

25 Dated: October 7, 2017

26 /s/ Michael J. Seng
27 UNITED STATES MAGISTRATE JUDGE
28