

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

RICKY RIVERA,
Plaintiff,
v.
DAVEY, *et al.*,
Defendants.

Case No. 1:16-cv-01817-AWI-BAM (PC)

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

(ECF No. 39)

THIRTY (30) DAY DEADLINE

I. Introduction

Plaintiff Ricky Rivera (“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 second amended complaint against Defendants Robicheaux, Chapoleun, and Crain for violations of the Free Exercise Clause of the First Amendment and against Defendant Davey for a deficient policy that violates the Free Exercise Clause of the First Amendment.

II. Service by the United States Marshal

On March 17, 2020, the Court issued an order directing the United States Marshals Service to initiate service of process in this action upon Defendants Robicheaux, Chapoleun, Crain, and Davey. (ECF No. 35.) On April 24, 2020, the United States Marshals Service filed a return of service unexecuted as to Defendant Chapoleun. (ECF No. 39.)

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

2 If a defendant is not served within 120 days after the complaint is filed, the
3 court—on motion or on its own after notice to the plaintiff—must dismiss the
4 action without prejudice against that defendant or order that service be made
5 within a specified time. But if the plaintiff shows good cause for the failure, the
6 court must extend the time for service for an appropriate period.

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

7 In cases involving a plaintiff proceeding *in forma pauperis*, the Marshal, upon order of the
8 court, shall serve the summons and the complaint. Fed. R. Civ. P. 4(c)(3). “[A]n incarcerated pro
9 se plaintiff proceeding in forma pauperis is entitled to rely on the U.S. Marshal for service of the
10 summons and complaint, and . . . should not be penalized by having his or her action dismissed
11 for failure to effect service where the U.S. Marshal or the court clerk has failed to perform the
12 duties required of each of them” Puett v. Blandford, 912 F.2d 270, 275 (9th Cir. 1990). “So
13 long as the prisoner has furnished the information necessary to identify the defendant, the
14 marshal’s failure to effect service is ‘automatically good cause’” Walker v. Sumner, 14 F.3d
15 1415, 1422 (9th Cir. 1994), abrogated on other grounds by Sandin v. Connor, 515 U.S. 472, 115
16 (1995). However, where a pro se plaintiff fails to provide the Marshal with accurate and
17 sufficient information to effect service of the summons and complaint, the Court’s sua sponte
18 dismissal of the unserved defendant is appropriate. Walker, 14 F.3d at 1421–22.

19 Here, the U.S. Marshal attempted to serve Defendant Chapoleun with the information that
20 Plaintiff provided. However, the Marshal was informed of the following by the Litigation
21 Coordinator at CSP-Corcoran that the Chaplin at the time of the events alleged in the complaint
22 was Matthew Vannissery. He resigned on April 24, 2016, and he is no longer employed at CSP-
23 Corcoran. The Community Resource Manager at CSP-Corcoran indicated that the last she heard,
24 Mr. Vannissery was returning to his country. CSP-Corcoran therefore would not accept service
25 and had no forwarding address to provide. (ECF No. 39.) Plaintiff therefore has not provided
26 sufficient information to identify and locate Defendant Chapoleun—possibly Defendant
27 Vannissery—for service of process. If Plaintiff is unable to provide the Marshal with the
28 necessary information to identify and locate this defendant, Defendant Chapoleun shall be

1 dismissed from this action, without prejudice. Pursuant to Rule 4(m), the Court will provide
2 Plaintiff with the opportunity to show cause why Defendant Chapoleun should not be dismissed
3 from the action at this time.

4 **III. Conclusion and Order**

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

- 6 1. Within **thirty (30) days** from the date of service of this order, Plaintiff shall show cause
7 why Defendant SMV Chapoleun should not be dismissed from this action; and
- 8 2. **The failure to respond to this order or the failure to show cause will result in the**
9 **dismissal of Defendant Chapoleun from this action due to Plaintiff's failure to serve**
10 **process pursuant to Federal Rule of Civil Procedure 4(m).**

11
12 IT IS SO ORDERED.

13 Dated: April 29, 2020

14 /s/ Barbara A. McAuliffe
15 UNITED STATES MAGISTRATE JUDGE
16
17
18
19
20
21
22
23
24
25
26
27
28