

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TODD D. BURPEE,

Plaintiff,

v.

HUFF and UNKNOWN
CORRECTIONAL OFFICER,

Defendants.

Case No. 1:21-cv-00297-ADA-HBK (PC)

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

THIRTY (30) DAY DEADLINE

Plaintiff Todd D. Burpee ("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 against Defendants Huff and Unknown Correctional Officer for claims alleging violation of Plaintiff's Fourteenth Amendment Equal Protection rights.

On February 17, 2023, the Court issued an order directing service on Defendants under the Court's E-Service pilot program for civil rights cases for the Eastern District of California. (Doc. No. 13). On September 13, 2023, the Court received information that Defendant Huff was successfully identified as a former employee of Valley State Prison, but Defendant Unknown Correctional Officer could not be identified. (Doc. Nos. 15, 16). On May 5, 2023, the United States Marshal returned the summons on Defendant Unknown Correctional Officer as unexecuted. (Doc. No. 17). The U.S. Marshal was unable to identify Defendant Unknown

1 Correctional Officer for service of process. (*Id.*). If Plaintiff is unable to provide the Marshal
2 with the necessary information to identify and locate this defendant, Defendant Unknown
3 Correctional Officer shall be dismissed from this action, without prejudice.

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

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

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

11 In cases involving a plaintiff proceeding *in forma pauperis*, the Marshal, upon order of the
12 court, shall serve the summons and the complaint. Fed. R. Civ. P. 4(c)(3). “[A]n incarcerated pro
13 se plaintiff proceeding in forma pauperis is entitled to rely on the U.S. Marshal for service of the
14 summons and complaint, and . . . should not be penalized by having his or her action dismissed
15 for failure to effect service where the U.S. Marshal or the court clerk has failed to perform the
16 duties required of each of them” *Puett v. Blandford*, 912 F.2d 270, 275 (9th Cir. 1990). “So
17 long as the prisoner has furnished the information necessary to identify the defendant, the
18 marshal’s failure to effect service is ‘automatically good cause’” *Walker v. Sumner*, 14 F.3d
19 1415, 1422 (9th Cir. 1994), *abrogated on other grounds by Sandin v. Connor*, 515 U.S. 472, 115
20 (1995). However, where a pro se plaintiff fails to provide the Marshal with accurate and
21 sufficient information to effect service of the summons and complaint, the Court’s *sua sponte*
22 dismissal of the unserved defendant is appropriate. *Walker*, 14 F.3d at 1421–22.

23 Here, the U.S. Marshal attempted to electronically serve Defendant Unknown
24 Correctional Officer with the information that Plaintiff provided. However, the Marshal was
25 informed that there was not enough information to identify Defendant Unknown Correctional
26 Officer for service of process. If Plaintiff is unable to provide the Marshal with the necessary
27 information to identify and locate this defendant, Defendant Unknown Correctional Officer shall
28 be dismissed from this action, without prejudice.

Pursuant to Rule 4(m), the Court will provide Plaintiff with the opportunity to show cause

1 why Defendant Unknown Correctional Officer should not be dismissed without prejudice from
2 the action at this time.

3 ACCORDINGLY, it is ORDERED:

- 4 1. Within thirty (30) days from the date of service of this order, Plaintiff shall show cause
5 why Defendant Unknown Correctional Officer should not be dismissed from this action;
6 and
7 **2. The failure to respond to this order or the failure to show cause will result in the**
8 **dismissal of any unidentified defendant from this action without prejudice, due to**
9 **Plaintiff's failure to serve process pursuant to Federal Rule of Civil Procedure 4(m).**
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11 Dated: November 14, 2023


12 HELENA M. BARCH-KUCHTA
13 UNITED STATES MAGISTRATE JUDGE
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