

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

JAMISI JERMAINE CALLOWAY,
Plaintiff,
v.
YOUSSEE, *et al.*,
Defendants.

Case No. 1:21-cv-01450-JLT-BAM (PC)
**ORDER TO SHOW CAUSE WHY
DEFENDANT T. LOAR SHOULD NOT BE
DISMISSED FROM THIS ACTION FOR
FAILURE TO PROVIDE SUFFICIENT
INFORMATION TO EFFECTUATE
SERVICE**
(ECF No. 25)
THIRTY (30) DAY DEADLINE

Plaintiff Jamisi Jermaine Calloway (“Plaintiff”) is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff’s first amended complaint against Defendants Y. Rao, D. Pilar, H. Diaz, T. Loar, and H. Smuzynski for deliberate indifference to serious medical needs in violation of the Eighth Amendment when they released Plaintiff from a suicide crisis bed, and against Defendants D. A. Lopez and M. Cuevas for deliberate indifference to serious medical needs in violation of the Eighth Amendment when they failed to intervene during Plaintiff’s two suicide attempts.

On June 21, 2022, the Court issued an order directing service on Defendants Y. Rao, D. Pilar, H. Diaz, T. Loar, H. Smuzynski, D. A. Lopez, and M. Cuevas under the Court’s E-Service pilot program for civil rights cases for the Eastern District of California. (ECF No. 25.) The order included the following information regarding Defendant Loar: “T. Loar, Psychologist,

1 KVSP; on or about May 20, 2020.” (*Id.* at 2.) On July 29, 2022, the Court received information
2 that Defendant Loar could not be identified.

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

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

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

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

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

26 Pursuant to Rule 4(m), the Court will provide Plaintiff with the opportunity to show cause
27 why Defendant Plata should not be dismissed from the action at this time. Plaintiff may respond
28 to this order by providing additional information that will assist the Marshal in identifying

1 Defendant Loar for service of process.

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

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

8

9 IT IS SO ORDERED.

10

11 Dated: August 1, 2022

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28