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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT BENYAMINI,

 Plaintiff,

 v.

O'BRIAN, et al.,

 Defendants.

No. 2:11-cv-02317 TLN AC P

ORDER TO SHOW CAUSE

Plaintiff, who is proceeding pro se and in forma pauperis, seeks relief pursuant to 42 U.S.C. § 1983.

I. Background

On August 25, 2011, plaintiff filed a civil rights complaint alleging harassment by prison officials and denial of access to the prison yard while he was in Administrative Segregation at California State Prison-Sacramento ("CSP-Sac") from July 31, 2007 through September 2, 2007. ECF No. 1. On September 21, 2012, plaintiff was granted in forma pauperis status. ECF No. 21. This court dismissed plaintiff's complaint with leave to file an amended complaint on January 23, 2013. ECF No. 24. Plaintiff filed a first amended complaint on February 15, 2013. ECF No. 25. On July 11, 2013, the amended complaint was ordered served on defendants Anderson, Bauer, J. Hanson, Howe, Juan, D. Leiber, Lopez, McHammer, O'Brian, Reid, Reynolds and J. Walker. ECF No. 29. The service order cautioned the parties that failure to obey the federal or local rules

1 or orders of the court could result in sanctions, including a recommendation that the case be
2 dismissed. ECF No. 29 at 5. The summons was returned unexecuted on Juan, Lopez, and Reid
3 on August 7, 2013. ECF No. 31. On September 23, 2013 the summons was also returned
4 unexecuted as to defendant Anderson. ECF No. 37.

5 In response to plaintiff's motion for judicial assistance in obtaining service information,
6 this court ordered defendants' counsel to query the Department of Corrections and Rehabilitation
7 concerning the whereabouts of defendants Juan, Lopez, Reid and Anderson. ECF No. 40. A
8 response was submitted on October 25, 2013 indicating that CSP-Sac had no reference to a Juan,
9 Lopez, or Reid on its employee rosters or personnel lists from 2007. See ECF No. 43.
10 Defendants' counsel further indicated that there were two individuals at CSP-Sac with the last
11 name of Anderson, but neither worked in the area where plaintiff was housed in 2007. Id. Thus,
12 without a first initial they were not able to properly identify this individual. Id.

13 Based on the lack of further identifying information for these defendants, to date the
14 complaint has not been served on defendants Juan, Lopez, Reid, and Anderson.

15 II. Legal Standards

16 Rule 4(m) of the Federal Rules of Civil Procedure provides that:

17 If a defendant is not served within 120 days after the complaint is
18 filed, the court-on motion or its own after notice to the plaintiff-
19 must dismiss the action without prejudice against that defendant....
But if the plaintiff shows good cause for the failure, the court must
extend the time for service for an appropriate period....

20 Id. The purpose of Rule 4(m) is "to assure that defendant will be promptly notified of the lawsuit,
21 thereby preventing possible prejudice resulting from delay: e.g., loss of evidence, dimming of
22 witnesses' memories, financial commitments based on not being sued, etc." Schwarzer, Tashima,
23 & Wagstaffe, California Practice Guide: Federal Civil Procedure Before Trial, § 5:261 (citation
24 omitted) (2006 rev.).


25 Accordingly, IT IS HEREBY ORDERED that plaintiff shall show cause in writing within
26 thirty days from the date of this order why defendants Juan, Lopez, Reid, and Anderson should

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1 not be dismissed without prejudice for failure to timely effect service of process and failure to
2 follow court orders. Fed. R. Civ. P. 4(m); E.D. Local Rule 110.

3 DATED: June 26, 2014

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5 ALLISON CLAIRE
6 UNITED STATES MAGISTRATE JUDGE
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