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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RUDY AROCHA,
Plaintiff,
v.
E. SAUCEDA, et al.,
Defendant.

No. 2: 11-cv-2959 KJN P

ORDER

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. On November 8, 2013, the undersigned recommended that defendants Munoz and Montanez be dismissed. On December 6, 2013, plaintiff filed objections to the findings and recommendations. For the following reasons, the findings and recommendations are vacated.

On June 11, 2013, the court ordered service of defendants Munoz and Montanez. (ECF No. 50.) Defendant Munoz, a former employee of Mule Creek State Prison (“MCSP”), was to be served at California State Prison-Corcoran (“Corcoran”). Defendant Montanez was to be served at MCSP.

On June 25, 2013, service as to defendants Munoz and Montanez was returned unexecuted because they could not be located in the “CDCR” locator. (ECF No. 53.) On July 5, 2013, the court granted plaintiff sixty days to provide additional information for service of these

1 defendants. (ECF No. 54.)

2 On August 29, 2013, plaintiff submitted new documents for service of defendant Munoz
3 at Corcoran. In these documents, plaintiff identified defendant Munoz by a first initial, "C."

4 On September 6, 2013, plaintiff filed a motion to compel requesting that defendants be
5 ordered to provide him with information regarding the location of defendants Munoz and
6 Montanez. (ECF No. 73.) In their opposition to this motion, defendants argued that the
7 information plaintiff sought did not exist, as demonstrated by a letter from the Mule Creek State
8 Prison ("MCSP") Litigation Coordinator attached to plaintiff's motion to compel. (ECF No. 77.)
9 This letter, dated August 8, 2013, states that MCSP does not have a record of either employee,
10 i.e., defendants Munoz and Montanez, who plaintiff is requesting information on. (ECF No. 73 at
11 20.)

12 On October 22, 2013, the undersigned denied plaintiff's motion to compel requesting that
13 defendants be ordered to provide him with information regarding the location of defendants
14 Munoz and Montanez. (ECF No. 80.) The undersigned found that defendants' objection that the
15 information sought did not exist was well taken. (Id.) The returned USM-285 forms indicated
16 that there was no record that either defendant was currently employed by the California
17 Department of Corrections and Rehabilitation. (Id.) The letter from the MCSP Litigation
18 Coordinator indicated that there was no record of either defendants ever being employed at
19 MCSP. (Id.)

20 In his objections, plaintiff alleges that defendant C. Munoz is employed at Corcoran and
21 that he has seen him there. Plaintiff also identifies defendant Montanez by a first name, i.e.,
22 Robert.

23 While there is information in the record indicating that neither defendant is employed by
24 CDCR, the court will order re-service of these defendants based on the new information provided
25 by plaintiff, i.e., a first initial and first name. By separate order, the court will direct the U.S.
26 Marshal to attempt service of defendant "C. Munoz" at Corcoran, using the forms submitted by
27 plaintiff in August 2013. Plaintiff will be directed to submit forms necessary for service of
28 defendant Robert Montanez herein.

1 On December 6, 2013, plaintiff filed a motion for leave to file a supplemental complaint
2 naming defendants Munoz and Montanez as doe defendants. This motion is denied as
3 unnecessary as the court is directing the U.S. Marshal to again attempt service of these
4 defendants.

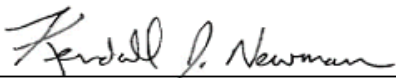
5 Accordingly, IT IS HEREBY ORDERED that:

- 6 1. The November 8, 2013 findings and recommendations (ECF No. 83) are vacated.
- 7 2. Plaintiff's December 6, 2013 motion for leave to file a supplemental complaint (ECF
8 No. 87) is denied.
- 9 3. The Clerk of the Court shall send plaintiff 1USM-285 form and one summons.
- 10 4. Within thirty days from the date of this order, plaintiff shall complete the attached
11 Notice of Submission of Documents and submit the following documents to the court:
 - 12 a. One completed summons;
 - 13 b. One completed USM-285 form for defendant Robert Montanez; and
 - 14 d. Two copies of the endorsed third amended complaint filed January 9, 2013.
- 15 5. Plaintiff need not attempt service on defendants and need not request waiver of service.

16 Upon receipt of the above-described documents, the court will direct the United States Marshal to
17 serve the above-named defendants pursuant to Federal Rule of Civil Procedure 4 without payment
18 of costs.

19 Dated: December 13, 2013

21 ar2959.dis(2)

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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ORDER

- _1_ completed summons form
- _1_ completed USM-285 forms
- _2_ copies of the _____
Complaint

DATED:

Plaintiff