Doc. 107 (PC) Pitts v. Davis et al 1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 EDDIE L. PITTS, No. 2:12-cv-0823 TLN AC P 12 Plaintiff. 13 **ORDER** v. 14 C. DAVIS, et al., 15 Defendants. 16 17 Plaintiff is a state prisoner, proceeding pro se and in forma pauperis, on an action pursuant 18 to 42 U.S.C. § 1983. Because a summons had been returned unexecuted as to defendant Boughn, 19 the court, by order filed on January 3, 2014, directed defendants' counsel to query the Department 20 of Corrections and Rehabilitation to ascertain the whereabouts of this defendant within fourteen 21 days. ECF No. 79. Counsel for defendants provided a timely response, on January 9, 2014, 22 stating that defendant Boughn had never been employed by CDCR but during the relevant period 23 had worked for a registry service that had a contract with CDCR to provide inmate medical 24 services. ECF No. 80. Counsel also provided the last known business address for Boughn at the 25 registry. Id.

On January 17, 2014, this court directed the U.S. Marshal to serve defendant Boughn at the address provided. ECF No. 83 (Order filed on 1/21/4). On June 17, 2014, the summons was

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personal service was attempted, equally without success, even after a further effort to gain an accurate address was made. <u>Id.</u>

Plaintiff must show good cause, within twenty-eight days, why defendant R. Boughn should not be dismissed pursuant to Federal Rule of Civil Procedure 4(m). Under Rule 4(m) of the Federal Rules of Civil Procedure, the court must dismiss without prejudice an action as to any defendant who has not been served within 120 days after a complaint has been filed "on motion or on its own after notice to the plaintiff" or specify a time for service to be effected. However, "if the plaintiff shows good cause for the failure, the court must extend the service for an appropriate period." <u>Id.</u> Absent good cause for the failure of service to be effected upon defendant Boughn, the court will recommend this defendant's dismissal without prejudice pursuant to Fed. R. Civ. P. 4(m).

Accordingly, IT IS HEREBY ORDERED that:

- 1. Plaintiff show good cause, within twenty-eight days, why the unserved defendant Boughn should not be dismissed from this action; and
- 2. Failure to show good cause will result in a recommendation of dismissal of defendant Boughn without prejudice, pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

DATED: June 27, 2014

ALLISON CLAIRE

UNITED STATES MAGISTRATE JUDGE

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