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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

VINCENT YEE,

 Plaintiff,

 v.

SACRAMENTO COUNTY JAIL, et al.,

 Defendants.

No. 2:14-cv-2955 KJM DB PS

ORDER

Plaintiff Vincent Yee is proceeding in this action pro se. This matter was referred to the undersigned in accordance with Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1).

On September 28, 2018, the assigned District Judge ordered service of process on defendants Kathleen Fritzche, Harold Penny, and Corey Johnson—City of Sacramento Police Officers—by the United States Marshals Service. (ECF No. 41.) On January 23, 2019, the United States Marshals returned the summons as unexecuted. (ECF No. 43.) On April 5, 2019, plaintiff filed a request for continuation of the time to serve defendants. (ECF No. 45.) Therein, plaintiff explains that defendants Penny and Fritzche have retired, while defendant Johnson remains employed. (Id. at 1.)

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1 Rule 4 of the Federal Rules of Civil Procedure (“Rule”) provides that if a defendant is not
2 served within 90 days the defendant must be dismissed from the action without prejudice. Fed. R.
3 Civ. P 4(m). However,

4 Rule 4(m) provides two avenues for relief. The first is mandatory:
5 the district court must extend time for service upon a showing of
6 good cause. The second is discretionary: if good cause is not
established, the district court may extend time for service upon a
showing of excusable neglect.

7 Crowley v. Bannister, 734 F.3d 967, 976 (9th Cir. 2013) (quoting Lemoge v. United States, 587
8 F.3d 1188, 1198 (9th Cir. 2009)).

9 Here, plaintiff has shown good cause for extending the time for service.

10 Accordingly, IT IS HEREBY ORDERED that:

11 1. Plaintiff’s April 5, 2019 request for an extension of time to complete service (ECF No.
12 45) is granted.

13 2. The Clerk of the Court is directed to issue process and to send plaintiff an instruction
14 sheet for service of process by the United States Marshal, three USM-285 forms, a summons
15 form, and an endorsed copy of plaintiff’s sixth amended complaint filed November 22, 2017.
16 (ECF No. 35.)

17 3. Within thirty (30) days of this order plaintiff shall submit to the United States Marshal
18 three properly completed USM-285 forms, three properly completed summons forms, and the
19 number of copies of the endorsed sixth amended complaint and of this order required by the
20 United States Marshal; the required documents shall be submitted directly to the United States
21 Marshal either by personal delivery or by mail to: United States Marshals Service, 501 I Street,
22 Suite 5600, Sacramento, CA 95814 (tel. 916-930-2030).

23 4. Within ten (10) days after submitting the required materials to the United States
24 Marshals Service, plaintiff shall file with this court a declaration stating the date on which
25 plaintiff submitted the required documents to the United States Marshal. Failure to file the
26 declaration in a timely manner may result in an order imposing appropriate sanctions.

27 5. Within thirty (30) days after receiving the necessary materials from plaintiff, the
28 United States Marshal is directed to serve process on defendants Kathleen Fritzsche, Harold

1 Penny, and Corey Johnson, without prepayment of costs.

2 6. The Clerk of the Court is directed to serve a copy of this order on the United States
3 Marshal.

4 7. Plaintiff is cautioned that the failure to comply with this order may result in a
5 recommendation that this action be dismissed.

6 DATED: May 3, 2019

/s/ DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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