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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KIRAN RAWAT, et al.,
Plaintiffs,
v.
TAMMY FERNANDES, et al.,
Defendants.

No. 2:17-cv-02100-KJM-KJN PS

ORDER AND FINDINGS AND
RECOMMENDATIONS

Presently pending before the court is defendant Andrew Wolff’s (“Wolff”) request to dismiss this matter with prejudice. (ECF No. 36.) Plaintiffs have opposed this request. (ECF No. 38.) Upon review of the documents in support and opposition, and the applicable law, the court finds as follows:

I. BACKGROUND

Plaintiff Kiran Rawat (“Rawat”), proceeding without counsel, commenced this action on October 10, 2017, and paid the filing fee. (ECF No. 1.) From the beginning of this action, Rawat and fellow plaintiff Raj Singh (“Singh”) have failed to follow numerous court orders. Despite being granted several opportunities, plaintiffs have failed to properly serve defendants. Instead, plaintiffs have responded with at least one documented lie and several specious representations that service has been completed.

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1 On October 4, 2018, defendant Wolff specially appeared and requested that this case be
2 dismissed because plaintiffs have failed to execute service. (See ECF No. 36.) In the interest of
3 justice, and to avoid placing form over substance, the court construes this request as a motion to
4 dismiss pursuant to Federal Rule of Civil Procedure 12(b)(5). For the reasons that follow, the
5 undersigned recommends that defendant's request be GRANTED and this case be DISMISSED
6 with prejudice based on insufficient service of process.

7 A. Procedural History

8 On October 11, 2017, the court ordered Rawat to complete service of process on
9 defendants within 90 days; ordered status reports by February 15, 2018; and set a status
10 conference for February 22, 2018. (ECF No. 3.) Rawat failed to provide timely proofs of service
11 or a timely status report, and she failed to appear at the status conference. (ECF No. 4.) Yet, on
12 the day the status conference was scheduled, Rawat filed a request for entry of default and default
13 judgment against defendants. (ECF No. 5.)

14 The court ordered Rawat to show cause in writing why it should not impose sanctions,
15 based upon her failure to appear at the status conference. (ECF No. 6 at 3.) The court explained
16 that as a *pro se* litigant, Rawat "must follow the same rules of procedure that govern other
17 litigants," including the Federal Rules of Civil Procedure. (Id. at 2, (citing King v. Atiyeh, 814
18 F.2d 565, 567 (9th Cir. 1987) (overruled on other grounds)).) Rawat responded that she forgot
19 about the status conference due to illness and her *pro se* status. (See ECF No. 7.)

20 Subsequently, the court ordered Rawat to pay a total of \$100 in monetary sanctions;
21 ordered status reports by April 26, 2018; and rescheduled the status conference for May 3, 2018.
22 (ECF No. 8.) The court also ordered Rawat to "be prepared to discuss, and support with
23 documentation, that defendants have been properly served, as directed." (Id.) Rawat paid the
24 \$100 in sanctions and provided proofs of service, asserting that defendants had been served by
25 Scott Smith. (ECF No. 9.) The proofs of service were clearly inadequate, however, and no status
26 reports were provided. Still, plaintiff again requested an entry of default against defendants.
27 (ECF No. 11.)

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1 Contrary to the court’s explicit directions, at the May 3, 2018 hearing, Rawat was not
2 prepared to discuss and demonstrate that defendants had been properly served. When the
3 undersigned asked Rawat who is Scott Smith and whether he is a professional process server,
4 Rawat indicated that she did not know because her husband had handled the service in this matter.
5 The undersigned pointed out the numerous issues with the proofs of service and admonished
6 Rawat that if she were represented by counsel and had made such mistakes, then this matter
7 would have been dismissed. Indeed, the court considered recommending dismissal of the case
8 based upon Rawat’s failure to effectuate service. “However, in light of plaintiff’s *pro se* status
9 and the court’s desire to have the case resolved on its merits, plaintiff [wa]s afforded one final
10 opportunity to properly effectuate service.” (ECF No. 13 at 1.)

11 Unbeknownst to the court at the time, Rawat’s husband, Raj Singh was also present in the
12 courtroom during the May 3, 2018 hearing.¹ However, he did not offer any information regarding
13 Scott Smith or the status of service.

14 On May 4, 2018, the court ordered Rawat to complete service of process by May 24,
15 2018; ordered status reports by July 12, 2018; and scheduled a further status conference for July
16 19, 2018. (ECF No. 13.) Rawat was warned that “failure to obey federal or local rules, or order
17 of this court, may result in dismissal of this action.” (*Id.* at 3.)

18 On June 4, 2018, Rawat filed a first amended complaint, adding Singh as an additional
19 *pro se* plaintiff. (ECF No. 15.) Plaintiffs returned executed summonses on June 15, 2018,
20 indicating that each defendant had been served on June 5, 2018, by Scott Smith, whose address
21 was listed as 1200 North B Street, Sacramento, CA 95814. (See ECF Nos. 17-19.) Plaintiffs’
22 attempts at service, however, were once again deficient. Defendants were not served by May 24,
23 2018, as ordered and at least two of the three defendants were served at inappropriate addresses.
24 (See ECF No. 20 at 2-3.) Additionally, plaintiffs failed to provide a timely status report, and none
25 of the defendants appeared, all of which strongly indicated that service had not been properly
26 effectuated.

27 ¹ During the June 19, 2018 hearing, Raj Singh indicated that he is Kiran Rawat’s husband, and
28 admitted that he had been in the courtroom during the May 3, 2018 hearing.

1 As a result, on July 17, 2018, the undersigned recommended that this case be dismissed
2 with prejudice pursuant to Federal Rule of Civil Procedure 41(b). (ECF No. 20.) However, on
3 the same day, plaintiffs provided a tardy status report and a request for entry of default against
4 defendants. (ECF Nos. 21, 22.)

5 The court held the July 19, 2018 hearing, at which only plaintiff Singh appeared. (ECF
6 No. 24.) The undersigned explained to Singh that the status report was inexcusably late and once
7 again admonished Singh that plaintiffs must follow the Rules of Federal Procedure and properly
8 serve defendants to proceed with this matter. The undersigned further explained that filing
9 requests for entry of default is not appropriate when service has not been properly completed.
10 Singh asserted that he and his wife are “very new to federal court” and requested another
11 opportunity to properly serve defendants, in accordance with the appropriate rules. The
12 undersigned agreed to grant Singh’s request, but strongly suggested that plaintiffs contract with a
13 licensed process server to ensure that service is properly completed, especially in light of the fact
14 that Scott Smith had now failed on two attempts at service.

15 Accordingly, on July 20, 2018, the undersigned vacated his findings and
16 recommendations, and ordered plaintiffs to complete service and file proofs of service no later
17 than August 16, 2018. (ECF No. 27.) Plaintiffs were warned that failure to effectuate service or
18 “[f]ailure to obey federal or local rules, or order of this court, will result in a recommendation of
19 dismissal of this action.” (*Id.* at 3.)

20 On August 8, 2018, plaintiffs voluntarily dismissed defendants Tammy Fernandes and
21 Chris Beaty. (ECF No. 29.) Plaintiffs also provided proof of service, attesting that the only
22 remaining defendant, Wolff was served on July 30, 2018, by personal service at 1615 Broadway,
23 4th Floor, Oakland, CA 94612. (ECF No. 30.) This is Wolff’s address of record with the
24 California State Bar. See <http://members.calbar.ca.gov/fal/Licensee/Detail/195092> (last visited
25 October 29, 2018). Service was purportedly completed by Ramona Davis, whose address was
26 listed as 1725 28th Street, Sacramento, CA 95816. (ECF No. 30.)

27 As a result, the court set a further status conference for October 11, 2018, and ordered
28 parties to file a joint status report by October 4, 2018. (ECF No. 32.) In addition to serving

1 plaintiffs, the court also served a copy of this order on Wolff at his address of record with the
2 California State Bar. (Id.)

3 On October 1, 2018, plaintiffs filed a status report asserting that Wolff had not contacted
4 them, but that plaintiffs had served him. (ECF No. 33.) Plaintiffs once again requested an entry
5 of default against Wolff. (ECF No. 34.) The Clerk of Court entered default as to defendant
6 Wolff on October 2, 2018. (ECF No. 35.)

7 B. Defendant’s Special Appearance and Request for Dismissal

8 On October 4, 2018, Wolff specially appeared and filed a request for dismissal, which the
9 court construes as a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(5). (See
10 ECF No. 36.) As a result, the undersigned vacated the October 11, 2018 status conference. (ECF
11 No. 37.) On October 12, 2018, plaintiffs filed an opposition to Wolff’s request. (ECF No. 38.)

12 Wolff declares under penalty of perjury that he was never served with any papers in this
13 matter. (Declaration of Andrew Wolff, ECF No. 36-1 [“Wolff Decl.”] ¶ 2.) Additionally, Wolff
14 points out that the address provided for Ramona Davis—1725 28th Street, Sacramento, CA—is
15 the address of the Sacramento County Department of Human Assistance. (See ECF No. 30;
16 Wolff Decl. ¶ 9, Exh. E.)² This county agency “plan[s], implement[s] and oversee[s] a spectrum
17 of programs and services designed to move people from public assistance to independence.”
18 <http://www.dha.saccounty.net/Pages/About-DHA.aspx> (last visited October 29, 2018.) There is
19 no indication that this agency acts as a process server in private litigation.

20 Moreover, Wolff points out that the address provided for Scott Smith—1200 North B
21 Street, Sacramento, CA—is the address of a homeless shelter run by the Salvation Army. (See
22 ECF Nos. 17-19; Wolff Decl. ¶ 7, Exh. C.)

23 Wolff also directs the court’s attention to a prefiling order from the Bankruptcy Court in
24 the Eastern District of California “that requires Raj Singh . . . to obtain authorization to file a new
25 bankruptcy . . . during the eight-year period commencing on December 11, 2011.” In re Singh,

26 ² The court takes judicial notice of the exhibits provided by Wolff because they contain readily
27 verifiable public information. See Reyn’s Pasta Bella, LLC v. Visa USA, Inc., 442 F.3d 741, 746
28 n.6 (9th Cir. 2006) (A court “may take judicial notice of court filings and other matters of public
record”).

1 551 B.R. 54, 56 (Bankr. E.D. Cal.), reconsideration denied, 553 B.R. 404 (Bankr. E.D. Cal.
2 2016). On June 1, 2016, the Bankruptcy Court denied Singh’s motion to vacate this order,
3 finding that

4 Raj Singh continues to ignore the seriousness of his litigation
5 misconduct and the great burden his meritless actions (bankruptcy
6 cases, adversary proceedings, and contested matters) impose on other
7 parties and the court. Rather, the Motion to Vacate and Raj Singh’s
arguments at the hearing are grounded in what appears to be Raj
Singh’s continuing need to use, and abuse, the bankruptcy laws and
federal courts as a forum for repeated feckless litigation. . . .

8 In addition to this bankruptcy court, Raj Singh has repeatedly
9 commenced proceedings in the federal courts and California state
10 courts (“State Courts”), both trial and appellate, to use, and abuse,
11 those courts against his adversaries. In his litigation prosecuted in
12 various forums, Raj Singh advances legally complex, though
13 meritless, arguments. While Raj Singh asserts meritless claims, it is
clear that he is a very intelligent person and is not filing the pleadings
in error or based on a misunderstanding or non-understanding of the
law. Rather, Raj Singh’s pleadings demonstrate that he is conversant
with federal and state statutory, common law, and complex Federal
Constitutional concepts.

14 In re Singh, 551 B.R. at 56.

15 Furthermore, Singh has been admonished for failing to properly serve motions in at least
16 one previous matter in federal court. See Id. at 64 (“You [Raj Singh] came in here [this
17 bankruptcy court] with a clean slate and you have proven yourself. You have filed motion after
18 motion that have absolutely no merit. You file motions and don’t serve the other party”).

19 II. LEGAL STANDARDS

20 Federal Rule of Civil Procedure 12(b)(5) allows a defendant to move to dismiss an action
21 based on insufficient service of process. If service is insufficient, as defined by Federal Rule of
22 Civil Procedure 4, “the district court has discretion to dismiss an action or to quash service.” S.J.
23 v. Issaquah Sch. Dist. No. 411, 470 F.3d 1288, 1293 (9th Cir. 2006). “Once service is challenged,
24 plaintiffs bear the burden of establishing that service was valid under Rule 4.” Brockmeyer v.
25 May, 383 F.3d 798, 801 (9th Cir. 2004). Rule 4 is a flexible rule that should be liberally
26 construed to uphold service so long as a party receives sufficient notice of the complaint. Chan v.
27 Soc’y Expeditions, Inc., 39 F.3d 1398, 1404 (9th Cir. 1994). However, “[n]either actual notice,
28 nor simply naming the person in the caption of the complaint, will subject defendants to personal

1 jurisdiction if service was not made in substantial compliance with Rule 4.” Jackson v.
2 Hayakawa, 682 F.2d 1344, 1347 (9th Cir. 1982) (internal citations omitted).

3 III. DISCUSSION

4 Here, Wolff challenges the sufficiency of service. (ECF No. 36.) Plaintiffs maintain that
5 Wolff was served. (ECF No. 38 at 1.) However, plaintiffs’ only evidence is the proof of service
6 purportedly signed by Ramona Davis. (ECF No. 30). While plaintiffs assure the court that
7 service has been completed, plaintiffs entirely lack credibility in this matter.

8 First, plaintiffs have taken advantage of this court’s generosity, pretending to be less
9 experienced litigants than they truly are. During the July 19, 2018 hearing in this matter, Singh
10 stated that he and Rawat are very new to federal court—a demonstrably false statement—in an
11 attempt to excuse their failures to follow the Federal Rules and the court’s orders. As explained,
12 Singh has a documented history of being a vexatious litigant in federal court. See In re Singh,
13 551 B.R. at 54. (“Raj Singh has repeatedly commenced proceedings in the federal courts . . . to
14 use, and abuse, those courts against his adversaries”). Singh’s lie to this court is unacceptable and
15 evidence that Singh continues to attempt to manipulate the courts for his own improper purposes.
16 Indeed, Singh “is a very intelligent person and is not [failing to effectuate service] in error or
17 based on a misunderstanding or non-understanding of the law.” Id. at 56.

18 Second, the specious nature of the proofs of service plaintiffs provided further undermines
19 their credibility. Each proof of service filed by plaintiffs in this matter is identical in format and
20 presentation to each other proof of service and pleading filed by plaintiffs. (See ECF Nos. 1, 5, 7,
21 9, 10, 15, 17-19, 21, 22, 25, 29, 30, 33, 34, 38.) Indeed, aside from the signature line and date,
22 there is no notable difference between the documents signed by Scott Smith and Ramona Davis.
23 (Compare ECF Nos. 9, 17-19, 33, 34, with ECF No. 30.) It appears that each proof of service and
24 pleading filed by plaintiffs in this matter was prepared using the same template.

25 Third, as explained, the address given for Ramona Davis is that of a government agency,
26 and the address given for Scott Smith is that of a homeless shelter. The court specifically warned
27 plaintiffs, on numerous occasions, that they need to properly serve defendants. Yet, plaintiffs
28 have failed to provide any information about either purported process server beyond the highly

1 suspect addresses and signatures³ included on the proofs of service. (See ECF Nos. 9, 17-19, 30,
2 33, 34, 38.)

3 Therefore, plaintiffs have failed to meet their burden to demonstrate that service was
4 effectuated. See Brockmeyer, 383 F.3d at 801. While “Rule 4 is a flexible rule that should be
5 liberally construed,” Chan, 39 F.3d at 1404, dismissal is appropriate at this juncture. Plaintiffs
6 have feigned inexperience and failed to properly complete service despite multiple opportunities
7 and warnings, including the court’s July 17, 2018 admonishment that “[f]ailure to obey federal or
8 local rules, or order of this court, will result in a recommendation of dismissal of this action.”
9 (ECF No. 20 at 3.) In light of plaintiff’s misconduct and apparent willful failures, plaintiffs
10 should not be given any further opportunity to complete service in this matter.

11 **IV. CONCLUSION**

12 Accordingly, IT IS HEREBY RECOMMENDED that:

- 13 1. Defendant’s request for dismissal (ECF No. 36) be GRANTED.
- 14 2. The action be DISMISSED with prejudice based on insufficient service of process.
- 15 3. The Clerk of Court be directed to vacate all dates and close this case.

16 IT IS ALSO HEREBY ORDERED that:

- 17 1. The Clerk of Court shall VACATE the entry of default against defendant Andrew
18 Wolff.
- 19 2. All pleading, discovery, and motion practice in this action are STAYED pending
20 resolution of the findings and recommendations. With the exception of objections to
21 the findings and recommendations and any non-frivolous motions for emergency
22 relief, the court will not entertain or respond to any motions and other filings until the
23 findings and recommendations are resolved.

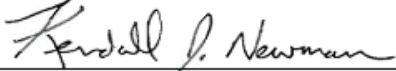
24 These findings and recommendations are submitted to the United States District Judge
25 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)

26 ³ Wolff also points to the similarities between the signatures of Scott Smith, Ramona Davis, and
27 plaintiffs, apparently suggesting that the signatures of Smith and Davis may be fraudulent.
28 (Wolff Decl. ¶¶ 6, 8.) Because plaintiffs have otherwise lied to the court and failed to prove that
service was effectuated, the court need not determine the validity of these signatures.

1 days after being served with these findings and recommendations, any party may file written
2 objections with the court and serve a copy on all parties. Such a document should be captioned
3 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections
4 shall be served on all parties and filed with the court within fourteen (14) days after service of the
5 objections. The parties are advised that failure to file objections within the specified time may
6 waive the right to appeal the District Court’s order. Turner v. Duncan, 158 F.3d 449, 455 (9th
7 Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

8 IT IS SO ORDERED AND RECOMMENDED.

9 Dated: November 8, 2018

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12 KENDALL J. NEWMAN
13 UNITED STATES MAGISTRATE JUDGE
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