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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY L. PATTON,
Plaintiff,
v.
F.N.P. LOADHOLT, et al.,
Defendants.

No. 2: 19-cv-0451 KJM KJN P

AMENDED FINDINGS AND
RECOMMENDATIONS

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. On October 14, 2020, the undersigned recommended that defendant Sanchez be dismissed. (ECF No. 83.) On November 5, 2020, plaintiff filed objections to these findings and recommendations. (ECF No. 90.) The undersigned herein issues amended findings and recommendations addressing plaintiff’s November 5, 2020 objections.

On October 9, 2019, the California Department of Corrections and Rehabilitation (“CDCR”) filed, under seal, a notice that CDCR would not waive service of defendant Sanchez, who is retired. (ECF No. 15.) CDCR provided defendant Sanchez’s last known address in this notice. (Id.) On February 24, 2020, the U.S. Marshal notified the court that service of defendant Sanchez at his last known address was returned unexecuted. (ECF No. 31).

By order filed March 5, 2020, the undersigned ordered plaintiff to complete and return to the court, within sixty days, the USM-285 form necessary to effect service on defendant Sanchez.

1 (ECF No. 36.) That sixty-days period passed and plaintiff did not respond to the March 5, 2020
2 order. Accordingly, on May 21, 2020, the undersigned recommended that defendant Sanchez be
3 dismissed. (ECF No. 47.)

4 On June 5, 2020, plaintiff filed objections to the May 21, 2020 findings and
5 recommendations. (ECF No. 49.) Plaintiff alleged that on June 1, 2020, he submitted a request
6 to the California Medical Board for information on defendant Sanchez's location. Plaintiff
7 requested ninety days to receive information from the California Medical Board and/or court
8 assistance in locating defendant Sanchez.

9 On June 19, 2020, the undersigned granted plaintiff sixty days to obtain information from
10 the California Medical Board regarding defendant Sanchez's location. (ECF No. 51.) Sixty days
11 passed from June 19, 2020, and plaintiff failed to provide information for service of defendant
12 Sanchez. Accordingly, on October 14, 2020, the undersigned recommended that defendant
13 Sanchez be dismissed. (ECF No. 83.)

14 On November 5, 2020, plaintiff filed objections to the October 14, 2020 findings and
15 recommendations. (ECF No. 90.) In these objections, plaintiff alleges that California Medical
16 Board failed to respond to his June 1, 2020 request for information regarding the location of
17 defendant Sanchez.

18 In cases involving a plaintiff proceeding in forma pauperis, the U.S. Marshal, upon order
19 of the Court, shall serve the summons and the complaint. 28 U.S.C. § 1915(d); Fed. R. Civ. P.
20 4(c)(3). “[A]n incarcerated pro se plaintiff proceeding in forma pauperis is entitled to rely on the
21 U.S. Marshal for service of the summons and complaint and [he] should not be penalized by
22 having his action dismissed for failure to effect service where the U.S. Marshal or the court clerk
23 has failed to perform his duties.” Walker v. Sumner, 14 F.3d 1415, 1422 (9th Cir. 1994) (internal
24 quotations and citation omitted), abrogated on other grounds by Sandin v. Connor, 515 U.S. 472
25 (1995).

26 “So long as the prisoner has furnished the information necessary to identify the defendant,
27 the marshal's failure to effect service is automatically good cause....” Walker, 14 F.3d at 1422
28 (internal quotations and citation omitted). However, where a pro se plaintiff fails to provide the

1 Marshal with accurate and sufficient information to effect service of the summons and complaint,
2 the Court's sua sponte dismissal of the unserved defendants is appropriate. Walker, 14 F.3d at
3 1421-22.

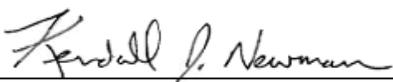
4 As discussed above, the U.S. Marshal attempted to serve defendant Sanchez at his last
5 known address, provided by CDCR. Service at this address was returned unexecuted on February
6 24, 2020. Although the court granted plaintiff an opportunity to obtain further information for
7 service of defendant Sanchez, plaintiff did not act diligently in attempting to obtain this
8 information. Plaintiff now claims that the California Medical Board failed to respond to his June
9 1, 2020 request for information regarding the location of defendant Sanchez.

10 The undersigned herein again recommends dismissal of defendant Sanchez based on
11 plaintiff's failure to provide sufficient information for service of this defendant. The undersigned
12 also finds, based on the unsuccessful service of defendant Sanchez at the address provided by
13 CDCR to the U.S. Marshal, it is unlikely that the California Medical Board would be able to
14 provide plaintiff with information that would lead to the successful service of this defendant.

15 Accordingly, IT IS HEREBY RECOMMENDED that defendant Sanchez be dismissed.

16 These findings and recommendations are submitted to the United States District Judge
17 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
18 after being served with these findings and recommendations, any party may file written
19 objections with the court and serve a copy on all parties. Such a document should be captioned
20 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
21 objections shall be filed and served within fourteen days after service of the objections. The
22 parties are advised that failure to file objections within the specified time may waive the right to
23 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

24 Dated: November 18, 2020

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26 _____
27 KENDALL J. NEWMAN
28 UNITED STATES MAGISTRATE JUDGE

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