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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
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7 JOSE ZAPATA,

8 Plaintiff,

9 v.

10 CLARK DUCART, et al.,

11 Defendants.

Case No. [17-cv-02557-EMC](#)

**ORDER RE UNSERVED DEFENDANT
AND DENYING REQUEST FOR
COUNSEL**

Docket Nos. 9, 10

12
13 A. Unservd Defendant Problem

14 The Court ordered service of process on five Defendants in this *pro se* prisoner's civil
15 rights action. Four of the five Defendants have been served with process and appeared in this
16 action. Defendant Jonathan Kreindler, formerly a rabbi at Pelican Bay State Prison, has not been
17 served with process or appeared in this action.

18 After attempting service of process, the U.S. Marshal filed a "process receipt and return"
19 form, indicating that Rabbi Kreindler could not be served at the only address provided, i.e.,
20 Pelican Bay State Prison. (Docket No. 9.) Specifically, the Marshal reported: "Deft. no longer
21 employed @ CDCR - no new information. Unable to further endeavor." (*Id.*)

22 "If a defendant is not served within 90 days after the complaint is filed, the court--on
23 motion or on its own after notice to the plaintiff--must dismiss the action without prejudice against
24 that defendant or order that service be made within a specified time. But if the plaintiff shows
25 good cause for the failure, the court must extend the time for service for an appropriate period."
26 Fed. R. Civ. P. 4(m). Where a prisoner is proceeding *in forma pauperis* and must rely on the
27 Marshal for service of process, "[s]o long as the prisoner has furnished the information necessary
28 to identify the defendant, the marshal's failure to effect service 'is automatically good cause' for

1 not effectuating timely service.” *Walker v. Sumner*, 14 F.3d 1415, 1422 (9th Cir. 1994),
2 *overruled on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995); *see e.g., id.* (district court
3 did not err in dismissing defendant where plaintiff “did not prove that he provided the marshal
4 with sufficient information to serve” this particular defendant or that he requested service).

5 Although it is the Marshal’s duty to serve process when a prisoner-plaintiff is proceeding
6 as a pauper, the Marshal’s ability to do so depends on a plaintiff providing sufficient information
7 about a defendant for the Marshal to find the defendant to serve him. Plaintiff has not provided
8 sufficient information for the Marshal to serve process on Rabbi Kreindler.

9 Accordingly, no later than **November 10, 2017**, Plaintiff must provide a current address at
10 which Rabbi Kreindler may be served with process. It is Plaintiff’s obligation, not the Court’s, to
11 gather this information. In the alternative to providing the information, Plaintiff must show cause
12 by that same deadline why he has not provided the information needed to locate the unserved
13 Defendant and serve process on him. If Plaintiff fails to provide sufficient information to enable
14 service of process to be accomplished, Rabbi Kreindler will be dismissed without prejudice unless
15 Plaintiff shows cause for his failure to provide the information.

16 B. Request For Appointment Of Counsel

17 Plaintiff has requested that counsel be appointed to represent him in this action. A district
18 court has the discretion under 28 U.S.C. §1915(e)(1) to designate counsel to represent an indigent
19 civil litigant in exceptional circumstances. *See Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th
20 Cir. 1986). This requires an evaluation of both the likelihood of success on the merits and the
21 ability of the plaintiff to articulate his claims *pro se* in light of the complexity of the legal issues
22 involved. *See id.* Neither of these factors is dispositive and both must be viewed together before
23 deciding on a request for counsel under § 1915(e)(1). Exceptional circumstances are not present
24 in this action: Plaintiff was able to articulate clearly his religious-diet claim and there do not
25 appear to be complex legal issues involved. The request for appointment of counsel is **DENIED**.
26 (Docket No. 10.)

27 C. Scheduling

28 In light of the need to resolve the service of process problem for Rabbi Kreindler, the

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Court now **VACATES** the briefing schedule for dispositive motions. Although several Defendants have appeared in this action, it is preferable to wait until Rabbi Kreindler has appeared or been dismissed to set a briefing schedule so that all Defendants can be on the same briefing schedule.

IT IS SO ORDERED.

Dated: September 26, 2017



EDWARD M. CHEN
United States District Judge