

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

GARY LEE FLEMING,

No. C 07-02338 CW (PR)

Plaintiff,

ORDER DIRECTING PLAINTIFF TO
PROVIDE REQUIRED INFORMATION
NECESSARY TO IDENTIFY DEFENDANT
CASTRO

v.

NURSE CASTRO,

Defendant.

_____ /

Plaintiff filed the instant pro se civil rights complaint under 42 U.S.C. § 1983. The Court issued an Order of Service and mailed a Notice of Lawsuit, a Request for Waiver of Service of Summons as well as the amended complaint to Defendant Nurse Castro. The Court dismissed without prejudice Plaintiff's remaining claims against all the other named Defendants.

Service has been ineffective on Defendant Castro. The Court has been informed that there are "two contract employees" with the same "Nurse" title as well as the same last name of Castro at Salinas Valley State Prison.

As Plaintiff is proceeding in forma pauperis, he is responsible for providing the Court with the full names and current addresses for all Defendants so that service can be accomplished. See Walker v. Sumner, 14 F.3d 1415, 1422 (9th Cir. 1994); Sellers v. United States, 902 F.2d 598, 603 (7th Cir. 1990).

Pursuant to Federal Rule of Civil Procedure 4(m), if a complaint is not served within 120 days from the filing of the complaint, it may be dismissed without prejudice for failure of service. When advised of a problem accomplishing service, a pro se

1 litigant proceeding IFP must "attempt to remedy any apparent
2 defects of which [he] has knowledge." Rochon v. Dawson, 828 F.2d
3 1107, 1110 (5th Cir. 1987). If the marshal's office is unable to
4 effectuate service through no fault of its own, e.g., because
5 Plaintiff failed to provide sufficient information or because the
6 defendant is not where Plaintiff claims, and Plaintiff is informed,
7 Plaintiff must seek to remedy the situation or face dismissal. See
8 Walker, 14 F.3d at 1421-22 (prisoner failed to show cause why
9 prison official should not be dismissed under Rule 4(m) because
10 prisoner did not prove that he provided marshal with sufficient
11 information to serve official); see also Del Raine v. Williford, 32
12 F.3d 1024, 1029-31 (7th Cir. 1994) (prisoner failed to show good
13 cause for failing to effect service timely on defendant because
14 plaintiff did not provide marshal with copy of amended complaint
15 until after more than 120 days after it was filed).

16 IT IS HEREBY ORDERED THAT within thirty (30) days of the date
17 of this Order, Plaintiff must provide the Court with the required
18 information necessary to identify Defendant Castro, such as first
19 name or identification number. Failure to do so shall result in
20 the dismissal of all claims against Defendant Castro. If Plaintiff
21 provides the Court with aforementioned required information,
22 service shall again be attempted. If service fails a second time,
23 all claims against Defendant Castro shall be dismissed, and this
24 case shall be closed.

25 IT IS SO ORDERED.

26 DATED: 10/22/2009



27 _____
CLAUDIA WILKEN
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

GARY LEE FLEMING,
Plaintiff,

Case Number: CV07-02338 CW

CERTIFICATE OF SERVICE

v.

DIRECTOR OF CORRECTIONS et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 22, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Gary Lee Fleming
T-29495
Salinas Valley State Prison
POB 1050
Soledad, CA 93960-1030

Dated: October 22, 2009

Richard W. Wieking, Clerk
By: Clara Pierce, Deputy Clerk