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2
3 IN THE UNITED STATES DISTRICT COURT
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA
5

6 DEMETRIUS A. WRIGHT,
7 Plaintiff,

8 v.

9 R. CARASCO, et al.,
10 Defendants.

No. C 10-00064 CW (PR)

ORDER REQUIRING SERVICE ON
DEFENDANT LVN E. WEST; SECOND
ORDER DIRECTING PLAINTIFF TO
PROVIDE CURRENT ADDRESS
NECESSARY TO LOCATE DEFENDANT
LVN HERNANDEZ; AND SETTING NEW
BRIEFING SCHEDULE

11
12 Plaintiff, a state prisoner at Salinas Valley State Prison
13 (SVSP), filed the present pro se prisoner complaint under 42 U.S.C.
14 § 1983 stemming from an excessive force incident that took place in
15 August, 2008.

16 On November 24, 2010, the Court issued an Order of Service.
17 In that Order, the Court found that Plaintiff's allegations --
18 specifically, that Defendants Licensed Vocational Nurses (LVNs)
19 West and Hernandez delayed treatment by sending Plaintiff back to
20 his housing unit without examining him even though he was
21 displaying symptoms of pain from the alleged excessive force
22 incident -- presented a cognizable deliberate indifference claim
23 against Defendants West and Hernandez. (Nov. 24, 2010 Order at 5.)
24 The Court also found other claims cognizable against Defendants
25 Carrasco and Ferry, who have been served in this action.

26 In an Order dated December 9, 2010, the Court informed
27 Plaintiff that service has been ineffective on Defendants West and
28 Hernandez. Plaintiff was directed to either provide the current

1 addresses or more information regarding Defendants West and
2 Hernandez, such as a first name or initial. The Court stated: "If
3 Plaintiff provides the Court with the information above, service
4 shall again be attempted. If service fails a second time, all
5 claims against Defendants West and Hernandez shall be dismissed."
6 (Dec. 9, 2010 Order at 2.)

7 On January 6, 2011, Plaintiff filed a document entitled,
8 "Motion for the Court to Order Service on Defendants LVNs West and
9 Hernandez at Salinas Valley [State] Prison," which shall be
10 construed as Plaintiff's response to the December 9, 2010 Order.
11 In that document, Plaintiff gave more information regarding
12 Defendants West and Hernandez, including Defendant West's first
13 initial, "E." Therefore, the deliberate indifference claim may
14 proceed against Defendant LVN E. West, who shall be served, as
15 directed below. All parties shall abide by the briefing schedule
16 outlined below.

17 Plaintiff also explained that he came across Defendant
18 Hernandez working in the "A-Facility" at the prison on December 17,
19 2010; however, he did not indicate a first initial or a current
20 address for that Defendant. Clerk staff contacted the litigation
21 coordinator at SVSP to forward the information that Plaintiff had
22 given the Court on January 6, 2010. On February 14, 2011, the
23 litigation coordinator at SVSP indicated that they have been unable
24 to locate Defendant Hernandez, stating: "Personnel records for the
25 institution do not reflect employment of a person by this name for
26 the date or location in which the alleged incident occurred."
27 (Feb. 10, 2011 Letter from Litigation Coordinator A. Esparza at 1.)

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

6 Pursuant to Fed. R. Civ. P. 4(m), if a complaint is not served
7 within 120 days from the filing of the complaint, it may be
8 dismissed without prejudice for failure of service. When advised
9 of a problem accomplishing service, a pro se litigant proceeding
10 IFP must "attempt to remedy any apparent defects of which [he] has
11 knowledge." Rochon v. Dawson, 828 F.2d 1107, 1110 (5th Cir. 1987).
12 If the marshal is unable to effectuate service through no fault of
13 his own, e.g., because the plaintiff failed to provide sufficient
14 information or because the defendant is not where the plaintiff
15 claims, and the plaintiff is informed, the plaintiff must seek to
16 remedy the situation or face dismissal. See Walker, 14 F.3d at
17 1421-22 (prisoner failed to show cause why claims against prison
18 official should not be dismissed under Rule 4(m) because prisoner
19 did not prove that he provided marshal with sufficient information
20 to serve official or that he requested that official be served);
21 see also Del Raine v. Williford, 32 F.3d 1024, 1029-31 (7th Cir.
22 1994) (prisoner failed to show good cause for failing to effect
23 timely service on defendant because plaintiff did not provide
24 marshal with copy of amended complaint until after more than 120
25 days after it was filed).

26 Service on Defendant Hernandez has been attempted and has
27 failed; however, the Court will allow Plaintiff a second

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1 opportunity to provide the Court with information necessary to
2 locate Defendant Hernandez.

3 CONCLUSION

4 1. Within thirty (30) days of the date of this Order,
5 Plaintiff must provide the Court with a current address, necessary
6 to locate Defendant Hernandez. Failure to do so shall result in
7 the dismissal of all claims against Defendant Hernandez. If
8 Plaintiff provides the Court with a current address, service shall
9 again be attempted. If service fails a second time, all claims
10 against Defendant Hernandez shall be dismissed.

11 2. Plaintiff's "Motion for the Court to Order Service on
12 Defendants LVNs West and Hernandez at Salinas Valley [State]
13 Prison" (docket no. 14) is TERMINATED as no longer pending on the
14 Court's docket because it has been construed as Plaintiff's
15 response to the December 9, 2010 Order.

16 3. The Clerk of the Court shall mail a Notice of Lawsuit and
17 Request for Waiver of Service of Summons, two copies of the Waiver
18 of Service of Summons, a copy of the complaint and all attachments
19 thereto (docket no. 1) as well as a copy of Plaintiff's "Motion for
20 the Court to Order Service on Defendants LVNs West and Hernandez at
21 Salinas Valley [State] Prison" (docket no. 14), a copy of the
22 Court's November 24, 2010 Order, and a copy of this Order to: SVSP
23 Licensed Vocational Nurse E. West. The Clerk of the Court shall
24 also mail a copy of the "Motion for the Court to Order Service on
25 Defendants LVNs West and Hernandez at Salinas Valley [State]
26 Prison" (docket no. 14) and a copy of this Order to Defendants
27 Carrasco's and Ferry's attorney, Adrian Shin at the State Attorney

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1 General's Office in San Francisco. Additionally, the Clerk shall
2 mail a copy of this Order to Plaintiff.

3 4. Defendant West is cautioned that Rule 4 of the Federal
4 Rules of Civil Procedure requires her to cooperate in saving
5 unnecessary costs of service of the summons and complaint.
6 Pursuant to Rule 4, if Defendant West, after being notified of this
7 action and asked by the Court, on behalf of Plaintiff, to waive
8 service of the summons, fails to do so, she will be required to
9 bear the cost of such service unless good cause be shown for her
10 failure to sign and return the waiver form. If service is waived,
11 this action will proceed as if Defendant West had been served on
12 the date that the waiver is filed, except that pursuant to Rule
13 12(a)(1)(B), Defendant West will not be required to serve and file
14 an answer before sixty (60) days from the date on which the request
15 for waiver was sent. (This allows a longer time to respond than
16 would be required if formal service of summons is necessary.)
17 Defendant West is asked to read the statement set forth at the foot
18 of the waiver form that more completely describes the duties of the
19 parties with regard to waiver of service of the summons. If
20 service is waived after the date provided in the Notice but before
21 Defendant West has been personally served, the Answer shall be due
22 sixty (60) days from the date on which the request for waiver was
23 sent or twenty (20) days from the date the waiver form is filed,
24 whichever is later.

25 5. Defendant West shall answer the allegations in
26 Plaintiff's complaint in accordance with the Federal Rules of Civil
27 Procedure.

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1 6. The following briefing schedule shall govern dispositive
2 motions filed by Defendants West, Carrasco and Ferry, in this
3 action:

4 a. No later than sixty (60) days from the date
5 Defendant West's answer is due, Defendants West, Carrasco and Ferry
6 shall file a motion for summary judgment or other dispositive
7 motion. The motion shall be supported by adequate factual
8 documentation and shall conform in all respects to Federal Rule of
9 Civil Procedure 56. If the aforementioned Defendants are of the
10 opinion that this case cannot be resolved by summary judgment, she
11 shall so inform the Court prior to the date the summary judgment
12 motion is due. All papers filed with the Court shall be promptly
13 served on Plaintiff.

14 b. Plaintiff's opposition to the dispositive motion
15 shall be filed with the Court and served on Defendants West,
16 Carrasco and Ferry no later than sixty (60) days after the date on
17 which the dispositive motion is filed.

18 c. Defendants West, Carrasco and Ferry shall file a
19 reply brief no later than thirty (30) days after the date
20 Plaintiff's opposition is filed.

21 d. The motion shall be deemed submitted as of the date
22 the reply brief is due. No hearing will be held on the motion
23 unless the Court so orders at a later date.

24 e. Defendants Carrasco and Ferry, who have previously
25 been served, have been told that discovery may be taken in this
26 action in accordance with the Federal Rules of Civil Procedure.
27 Leave of the Court pursuant to Rule 30(a)(2) is also hereby granted
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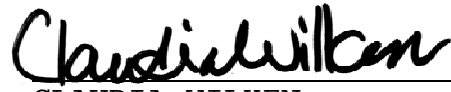
1 to Defendant West to depose Plaintiff and any other necessary
2 witnesses confined in prison.

3 f. As Plaintiff has been instructed to do so with
4 Defendants Carrasco and Ferry, all communications by Plaintiff with
5 the Court must be served on Defendant West, or Defendant West's
6 counsel once counsel has been designated, by mailing a true copy of
7 the document to her counsel.

8 7. This Order terminates Docket no. 14

9 IT IS SO ORDERED.

10 Dated: 3/3/2011



11 CLAUDIA WILKEN
12 UNITED STATES DISTRICT JUDGE

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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 DEMETRIUS A. WRIGHT,

5 Plaintiff,

6 v.

7 R. CARASCO et al,

8 Defendant.

Case Number: CV10-00064 CW

CERTIFICATE OF SERVICE

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

11 That on March 3, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
13 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
14 receptacle located in the Clerk's office.

15 Demetrius Ahmed Wright T65802
16 Salinas Valley State Prison
17 P.O. Box 1050
18 Soledad, CA 93960

19 Dated: March 3, 2011

20 Richard W. Wieking, Clerk
21 By: Nikki Riley, Deputy Clerk
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