

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

3 DAVID GAVALDON,
4 Plaintiff,

No. C 11-02887 SBA (PR)

5 v.

**ORDER TO SHOW CAUSE WHY
CLAIMS AGAINST UNSERVED
NAMED DEFENDANTS SHOULD
NOT BE DISMISSED**

6 MATTHEW L. CATE, et al.,
7 Defendants.

8 Plaintiff, a state prisoner, has filed a pro se civil rights action pursuant to 42 U.S.C. § 1983.
9 He has paid the full filing fee.

10 Venue is proper because the events giving rise to the claim are alleged to have occurred at
11 the Pelican Bay State Prison (PBSP), which is located in this judicial district. See 28 U.S.C.
12 § 1391(b).

13 In his complaint, Plaintiff names multiple Defendants, who are mostly prison officials at
14 PBSP. Plaintiff seeks monetary damages and injunctive relief.

15 To date, Plaintiff has not filed a proof of service on any of the Defendants named in this
16 action. Rule 4(m) of the Federal Rules of Civil Procedure provides:

17 If service of a summons and complaint is not made upon a defendant within 120 days
18 after the filing of the complaint, the court, upon motion or on its own initiative after
19 notice to the plaintiff, shall dismiss the action without prejudice as to that defendant
20 or direct that service be effected within a specified time; provided that if the plaintiff
shows good cause for the failure, the court shall extend the time for service for an
appropriate period.

21 Fed. R. Civ. P. 4(m). Here, Plaintiff's complaint has been pending for over 120 days and thus,
22 absent a showing of "good cause," claims against the unserved defendants are subject to dismissal
23 without prejudice. See Fed. R. Civ. P. 4(m).

24 Recognizing the fact that he is an incarcerated pro se litigant, the Court finds good cause
25 exists to extend the service deadline under Rule 4(m). Within **thirty (30) days** from the date of this
26 Order, Plaintiff shall file proof that he has served the named Defendants. The failure to do so will
27 result in the dismissal of all claims against these named Defendants without prejudice.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Even if a prisoner pays the fee and serves the complaint on his own, the Court is still required to review the action before it can proceed. See 28 U.S.C. § 1915A(a) (federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity.) Once Plaintiff has filed proof that he has served the named Defendants, the Court will screen the complaint in a separate written order.

It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court informed of any change of address and must comply with the Court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute, pursuant to Federal Rule of Civil Procedure 41(b).

Extensions of time are not favored, though reasonable extensions will be granted. Any motion for an extension of time must be filed no later than **fifteen (15) days** prior to the deadline sought to be extended.

IT IS SO ORDERED.

DATED: 12/12/11


SAUNDRA BROWN ARMSTRONG
United States District Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

DAVID GAVALDON,
Plaintiff,

Case Number: CV11-02887 SBA

CERTIFICATE OF SERVICE

v.

MATTHEW L. CATE 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 December 13, 2011, 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.

David Gavaldon C15376
Pelican Bay State Prison
P.O. Box 7500
Crescent City, CA 95532

Dated: December 13, 2011

Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk