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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DARREN HENDERSON,
Plaintiff,
v.
J. LEWIS, et al.,
Defendants.

Case No. 17-cv-06977-HSG (PR)

**ORDER REGARDING UNSERVED
DEFENDANT; DENYING
PLAINTIFF'S MOTION FOR ORDER
DIRECTING DEFENDANTS TO FILE
RESPONSIVE PLEADING**

Re: Dkt. No. 28

INTRODUCTION

Plaintiff, an inmate at California State Prison–Sacramento, proceeding *pro se*, filed this civil rights action pursuant to 42 U.S.C. § 1983 against officials and staff at Salinas Valley State Prison (“SVSP”), where he was previously incarcerated. On July 9, 2018, the Court screened plaintiff’s amended complaint and found that it stated a cognizable Eighth Amendment claim of deliberate indifference to serious medical needs. Service was ordered on five defendants. On July 13, 2018, the summons for defendant Nurse Rodriguez was returned unexecuted with the following remark by the United States Marshal: “CDCR is unable to identify an employee with given last name.” Docket No. 22. The other four defendants, L. Gamboa, K. Kumar, J. Lewis, and C. Watson, have been served and have filed a waiver of reply.

On July 19, 2018, the Court ordered plaintiff to either effect service on defendant Rodriguez or provide the Court with his current location such that the Marshal could affect service. Now before the Court is plaintiff’s response to the Court’s directions regarding defendant Rodriguez. Plaintiff has also filed a motion requesting a court order directing the defendants to file a responsive pleading to the amended complaint.

1 **DISCUSSION**

2 **A. Unserved Defendant**

3 Plaintiff has filed a notice providing the Court with the following additional information
4 for the unserved defendant: (1) defendant’s name is J. Rodriquez; (2) defendant is a licensed
5 vocational nurse (“LVN”); and (3) defendant was employed at the SVSP C-Facility from June
6 2016 to January 2017. The Court will re-issue service pursuant to the instructions below.

7 **B. Motion for Responsive Pleading**

8 Plaintiff’s motion for an order directing defendants L. Gamboa, K. Kumar, J. Lewis, and
9 C. Watson to file an answer to his amended complaint is DENIED. Defendants “may waive the
10 right to reply to any action brought by a prisoner . . . under section 1983 of this title or any other
11 Federal law.” 42 U.S.C. § 1997e(g)(1). Defendants L. Gamboa, K. Kumar, J. Lewis, and C.
12 Watson have filed waivers of the right to reply, which was a permissible response under § 1997
13 e(g)(1) to plaintiff’s amended complaint. Although “the court may require any defendant to reply
14 to a complaint brought under this section if it finds that the plaintiff has a reasonable opportunity
15 to prevail on the merits,” 42 U.S.C. § 1997e(g)(2), the Court declines to do so at this time. If the
16 case gets beyond the summary judgment stage and moves closer to trial, if there will be a trial,
17 the Court will on its own motion consider ordering defendants to file an answer to the amended
18 complaint.

19 **CONCLUSION**

20 For the foregoing reasons, the Court orders as follows:

- 21 1. Plaintiff’s motion for an order directing defendants to file a responsive pleading is
22 DENIED.
- 23 2. The Clerk shall re-issue summons and the United States Marshal shall serve, without
24 prepayment of fees, a copy of the first amended complaint in this matter (dkt. no. 16), all
25 attachments thereto, a copy of the Court’s July 9, 2018 screening order (dkt. no. 18), and a copy of
26 this order on defendant **LVN J. Rodriquez** at **Salinas Valley State Prison**.

27 The Clerk is further directed to correct the spelling of defendant Rodriquez’s name on the
28 court docket by substituting “LVN J. Rodriquez” for “Rodriquez.”


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3. The Clerk shall send a copy of this order to the Litigation Coordinator at Salinas Valley State Prison, who is requested to file notice with the Court as to whether defendant LVN J. Rodriquez can be identified with the additional information provided by plaintiff as stated above within **twenty-eight (28)** days from the date this order is filed. If there is no such person, the Litigation Coordinator is requested to file notice whether a person with the last name “Rodriguez” matches the identifying information provided by plaintiff. If the defendant can be identified but is no longer at SVSP, the Litigation Coordinator is requested to provide to the Court any forwarding address information and last known address that is available within **twenty-eight (28)** days from the date of this order. A non-CDCR address should be provided under seal.

This order terminates Dkt. No. 28.

IT IS SO ORDERED.

Dated: 9/13/2018


HAYWOOD S. GILLIAM, JR.
United States District Judge