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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

THOMAS JEFFERSON CARES,  
Plaintiff,  
v.  
ERIC TRIOLO, et al.,  
Defendants.

Case No. 18-cv-07651-HSG

**ORDER DISMISSING DEFENDANT  
ERIC TRIOLO**

United States District Court  
Northern District of California

Plaintiff Thomas Jefferson Cares, proceeding in forma pauperis, filed this civil action in December 2018 against Defendants Eric Triolo, Kelly Burbank, Paul Gilles, the County of San Benito, Darren Thompson, Gregory LaForge, Mitt French, and Patrick Palacios. Dkt. No. 1. The only remaining Defendants are Defendants Triolo, Burbank, and Gilles. Dkt. No. 38. Defendants Burbank and Gilles have been served. The Marshal was unable to serve Defendant Triolo because he appears to have changed residences. See Dkt. No. 18.


On June 26, 2019, the Court ordered that within sixty (60) days, Plaintiff must effect service on Defendant Triolo, or submit to the Court sufficient information to locate Defendant Triolo such that the Marshal is able to effect service. Dkt. No. 40. The Court warned Plaintiff that failure to do so would result in dismissal of Defendant Triolo without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. Id. Federal Rule of Civil Procedure 4(m) provides that if a defendant is not served within 90 days after the complaint is filed, a court, “on motion or on its own after notice to the plaintiff,” must dismiss the action against the unserved defendant without prejudice. See Fed. R. Civ. P. 4(m). If a plaintiff shows good cause for failure, a court must extend the time for service.

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The parties filed a joint status report on September 24, 2019, updating the Court on the progress of Plaintiff's criminal case and Plaintiff's efforts to serve or locate Defendant Triolo. Dkt. No. 41. Plaintiff states that he is unable to effect service on or locate Defendant Triolo. Id. Accordingly, given that it is now well past the 90 days for Plaintiff to effect service under Rule 4(m), the Court **DISMISSES** Defendant Triolo **WITHOUT PREJUDICE**. The Clerk shall terminate Defendant Triolo from the case.

**IT IS SO ORDERED.**

Dated: 10/3/2019

  
HAYWOOD S. GILLIAM, JR.  
United States District Judge