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FILED

APR 20 2011

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

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

JOSE LUIS LARA,

Plaintiff,

vs.

DR. POSNER,

Defendant.

No. C 02-05429 JW (PR)

ORDER DIRECTING CLERK TO
REISSUE SUMMONS TO
DEFENDANT POSNER; DIRECTING
PLAINTIFF TO PROVIDE COURT
WITH LOCATION INFORMATION
FOR DEFENDANT POSNER

Plaintiff, a California inmate proceeding pro se, filed this civil rights complaint under 42 U.S.C. § 1983, alleging deliberate indifference to his serious medical needs by Salinas Valley State Prison (“SVSP”) employees. Only Defendant Dr. Posner remains in this action.

DISCUSSION

A. Reissue Summons

On March 26, 2010, the Court directed the clerk to reissue summons as to defendant Dr. Posner at Corcoran State Prison (“CSP”). (See Docket No. 76.) The clerk did so on March 31, 2010. (See Docket No. 78.) Several months passed with no response by Dr. Posner or prison officials to the summons. In the last Court order

1 filed September 22, 2010, the Litigation Coordinator at CSP was ordered to file
2 notice within thirty days from the date the order was filed, stating the status of
3 defendant Dr. Posner's current employment status at CSP and whether defendant
4 received notice of and/or received the summons issued on March 31, 2010. (Docket
5 No. 82.) The clerk sent a courtesy copy of the order to the Attorney General's
6 office. Due to the lack of response from CSP, the Court ordered the Attorney
7 General's Office to file notice regarding the status of Dr. Posner.

8 On March 22, 2011, the Attorney General's Office filed a letter stating that to
9 their knowledge, Dr. Posner has not been an employee of the State of California for
10 a number of years and that the summons issued on March 31, 2010 has never been
11 served on Dr. Posner. (Docket No. 84.) However, there has been no response from
12 the Litigation Coordinator at CSP to confirm this information. In the interest of
13 justice, the Court will order the clerk to reissue summons to defendant Dr. Posner at
14 CSP.

15 **B. Plaintiff to File Location Information**

16 Because it appears that Dr. Posner may no longer be at the location which
17 plaintiff indicated, plaintiff will have to remedy the situation or face dismissal of his
18 claims against defendant Posner without prejudice. See Walker v. Sumner, 14 F.3d
19 at 1421-22 (holding prisoner failed to show cause why prison official should not be
20 dismissed under Rule 4(m) where prisoner failed to show he had provided Marshal
21 with sufficient information to effectuate service). Plaintiff "may not remain silent
22 and do nothing to effectuate such service"; rather, "plaintiff should request service
23 upon the appropriate defendant and attempt to remedy any apparent defects of which
24 [he] has knowledge." Rochon v. Dawson, 828 F.2d 1107, 1110 (5th Cir. 1987).

25 Here, plaintiff's amended complaint has been pending for over 120 days, and
26 thus, absent a showing of "good cause," is subject to dismissal without prejudice.
27 See Fed. R. Civ. P. 4(m). Accordingly, plaintiff shall provide the Court with a
28 current location for unserved defendant Posner in a pleading **no later than thirty**

1 **(30) days** from the date of this order. Plaintiff must provide the Court with this
2 information in order for the Court to provide the United States Marshal with
3 sufficient information for service to be effected under Fed. R. Civ. P. 4(c)(2). See
4 Walker v. Sumner, 14 F.3d 1415, 1422 (9th Cir. 1994). **Failure to comply with**
5 **this order in the time provided may result in dismissal of the claims against**
6 **defendant Dr. Posner without prejudice under Rule 4(m) of the Federal Rules**
7 **of Civil Procedure.**

8
9 **CONCLUSION**

10 It is hereby ordered as follows:

11 1. The clerk shall re-issue a summons and the United States Marshal
12 shall serve, without prepayment of fees, a copy of the amended complaint in this
13 matter (Docket No. 12), all attachments thereto, a copy of the Court's order filed
14 November 9, 2006, (Docket No. 17), and a copy of this order to defendant Posner at
15 Corcoran State Prison.

16 2. In order to expedite the resolution of this case;

17 a. Defendant shall, within **sixty (60) days** from the date he is
18 served with the amended complaint, file a motion for summary judgment or other
19 dispositive motion, or shall notify the Court that he is of the opinion that this case
20 cannot be resolved by such a motion. The motion shall be supported by adequate
21 factual documentation and shall conform in all respects to Federal Rule of Civil
22 Procedure 56.

23 Defendant is advised that summary judgment cannot be granted, nor qualified
24 immunity found, if material facts are in dispute. If defendant is of the opinion that
25 this case cannot be resolved by summary judgment, he shall so inform the Court
26 prior to the date the summary judgment motion is due.

27 All papers filed with the Court shall be served promptly on plaintiff.

28 b. Plaintiff's opposition to the dispositive motion shall be filed with

1 the Court and served on defendant's counsel not later than **thirty (30) days** from the
2 date defendant's motion is filed. The Ninth Circuit has held that the following
3 notice should be given to pro se plaintiffs:

4 The defendants have made a motion for summary judgment by which
5 they seek to have your case dismissed. A motion for summary
6 judgment under Rule 56 of the Federal Rules of Civil Procedure will,
7 if granted, end your case.

8 Rule 56 tells you what you must do in order to oppose a motion for
9 summary judgment. Generally, summary judgment must be granted
10 when there is no genuine issue of material fact--that is, if there is no
11 real dispute about any fact that would affect the result of your case, the
12 party who asked for summary judgment is entitled to judgment as a
13 matter of law, which will end your case. When a party you are suing
14 makes a motion for summary judgment that is properly supported by
15 declarations (or other sworn testimony), you cannot simply rely on
16 what your complaint says. Instead, you must set out specific facts in
17 declarations, depositions, answers to interrogatories, or authenticated
18 documents, as provided in Rule 56(e), that contradict the facts shown
19 in the defendant's declarations and documents and show that there is a
20 genuine issue of material fact for trial. If you do not submit your own
21 evidence in opposition, summary judgment, if appropriate, may be
22 entered against you. If summary judgment is granted in favor of
23 defendants, your case will be dismissed and there will be no trial.

24 See Rand v. Rowland, 154 F.3d 952, 963 (9th Cir. 1998) (en banc).

25 Plaintiff is advised to read Rule 56 of the Federal Rules of Civil Procedure
26 and Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)
27 (holding party opposing summary judgment must come forward with evidence
28 showing triable issues of material fact on every essential element of his claim).
29 Plaintiff is cautioned that failure to file an opposition to defendants' motion for
30 summary judgment may be deemed to be a consent by plaintiff to the granting of the
31 motion, and granting of judgment against plaintiff without a trial. See Ghazali v.
32 Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (per curiam); Brydges v. Lewis, 18 F.3d
33 651, 653 (9th Cir. 1994).

34 c. Defendant may file a reply brief no later than **fifteen (15) days** after
35 plaintiff's opposition is filed.

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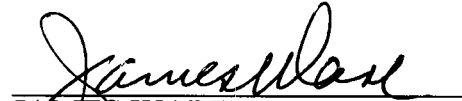
date.

3. Discovery may be taken in accordance with the Federal Rules of Civil Procedure. No further Court order under Federal Rule of Civil Procedure 30(a)(2) or Local Rule 16-1 is required before the parties may conduct discovery.

4. All communications by plaintiff with the Court must be served on defendant's counsel once counsel has been designated, by mailing a true copy of the document to defendant's counsel.

DATED:

April 15, 2011



JAMES WARE
United States District Chief Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

JOSE LUIS LARA,
Plaintiff,

Case Number: CV02-05429 JW

CERTIFICATE OF SERVICE

v.

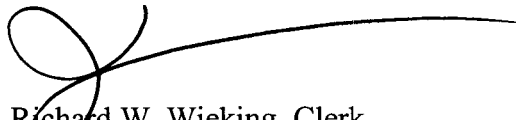
DR. POSNER,
Defendant.

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 4/20/11, 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.

Jose Luis Lara
1676 Spooner Dr.
San Luis Obispo, CA 93405

Dated: 4/20/11


Richard W. Wieking, Clerk
By: Elizabeth Garcia, Deputy Clerk