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

JESUS H. BORJAS,)	No. C 04-02252 JW (PR)
)	
Plaintiff,)	ORDER OF DISMISSAL OF CLAIMS
)	AGAINST UNSERVED
vs.)	DEFENDANTS; DIRECTING
)	PLAINTIFF TO PROVIDE
L. BREE, et al.,)	INFORMATION FOR REMAINING
)	UNSERVED DEFENDANTS
Defendant(s).)	
_____)	

Plaintiff, a California prisoner, filed a pro se civil rights action under 42 U.S.C. § 1983 against various Pelican Bay State Prison officials for violations of plaintiff’s constitutional rights. This order addresses the status of unserved defendants.

DISCUSSION

A. Additional Information Not Provided for Defendants

On March 13, 2009, the Court ordered plaintiff to provide sufficient information to serve unserved defendants Duncan, Johnson, R. Robers. Dr. D. Winslow, Warden J. McGrath, A. Everett, A. Atkins and Schwartz. (Docket No. 50.)

Order of Dismissal; Inst. To Pre Unserved Ds
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1 Plaintiff was advised that he was responsible to provide sufficient information in
2 order for the Court to direct the United States Marshal to effect service under Fed. R.
3 Civ. P. 4(c)(2). Plaintiff was warned that failure to provide this information within
4 thirty days from the date of the order would result in dismissal of the complaint
5 against these defendants under Rule 4(m) of the Federal Rules of Civil Procedure.

6 Plaintiff was granted an extension of time to comply with the court order on
7 May 28, 2009, such that he had an additional thirty days from that date to either
8 provide proof of service of the complaint on the defendants or provide the Court with
9 the information to allow the Marshal to effect service on his behalf. The deadline has
10 long since passed, and plaintiff has failed to comply. Accordingly, all claims against
11 these defendants are DISMISSED without prejudice under Rule 4(m) of the Federal
12 Rules of Civil Procedure.

13 B. Remaining Unserved Defendants

14 In the March 13, 2009 order, the Court directed the clerk to issue summons on
15 defendants Dr. Srikureja, F. Guy, Sr., and Rogers at Pelican Bay State Prison as it
16 appeared that these defendants were not initially served. (Docket No. 50.)

17 The summons for defendants Dr. Srikureja and F. Guy, Sr., were returned on
18 May 6, 2009, with the following comment: "The facility has no information on the
19 subject. The facility will not accept service." (See Docket Nos. 57 & 58.)

20 Accordingly, these two defendants have not been served and are not at the location
21 provided by plaintiff. Federal Rule of Civil Procedure 4(m) contemplates that service
22 of process normally will be accomplished within four months of the filing of the
23 complaint. Although the Court can have the Marshal serve process on a defendant, it
24 is plaintiff's responsibility to provide a full name, including a first name or initial,
25 and address for each defendant to be served. Plaintiff must provide the Court with
26 this information in a pleading no later than **thirty (30) days** from the date of this
27 order, in order for the Court to provide the United States Marshal with sufficient

1 information for service to be effected under Fed. R. Civ. P. 4(c)(2). See Walker v.
2 Sumner, 14 F.3d 1415, 1422 (9th Cir. 1994). Failure to do so may result in dismissal
3 of the complaint against defendant Duncan under Rule 4(m).

4 The summons for defendant Rogers was returned on May 6, 2009, with the
5 following comment: “The facility has no information on the subject. The facility has
6 more than one ‘Rogers’.” (See Docket No. 59.) Accordingly, this defendant has not
7 been served. Additional information is required from plaintiff in order to proceed
8 against this defendant. Plaintiff must provide the first name or initial of defendant
9 Rogers to the Court in a pleading within **thirty (30) days** from the date of this order
10 in order for the Court to provide the United States Marshal with sufficient
11 information for service to be effected under Fed. R. Civ. P. 4(c)(2). See Walker, 14
12 F.3d at 1422. Failure to do so may result in dismissal of the complaint against this
13 defendant.

14 CONCLUSION

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


16 1. All claims against defendants Duncan, Johnson, R. Roberts, Dr. D.
17 Winslow, Warden J. McGrath, Dr. A. Everett, A. Atkins and Schwartz are dismissed
18 without prejudice under Rule 4(m) of the Federal Rules of Civil Procedure. The
19 clerk shall terminate these defendants from this action.

20 2. Plaintiff shall provide the Court with the necessary information
21 as discussed above for unserved defendants Dr. Srikureja, F. Guy, Sr., and Rogers in
22 a pleading **no later than thirty (30) days** from the date of this order. Plaintiff must
23 provide the Court with sufficient information in order for the Court to provide the
24 United States Marshal with sufficient information for service to be effected under
25 Fed. R. Civ. P. 4(c)(2). See Walker, 14 F.3d at 1422. In the alternative, plaintiff may
26 provide proof of service of the complaint on these defendants.
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Failure to comply with this order may result in dismissal of the complaint against these defendants under Rule 4(m) of the Federal Rules of Civil Procedure.

DATED: March 30, 2010



JAMES WARE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

JESUS H. BORJAS,
Plaintiff,

Case Number: CV04-02252 JW

CERTIFICATE OF SERVICE

v.

L. BREE, et al.,
Defendants.

_____/

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 3/31/2010, 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.

Jesus H. Borjas E-89513
Pelican Bay State Prison
P. O. Box 7500
Crescent city, Ca 95532

Dated: 3/31/2010

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