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E-FILED - 11/12/08

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

MARCOS C. GUILLEN,)
)
Plaintiff,)
)
v.)
)
J. BENNETT, et al.,)
)
Defendants.)
_____)

No. C 05-4910 RMW (PR)

ORDER GRANTING
EXTENSION OF TIME
AND DIRECTING
PLAINTIFF TO SERVE OR
PROVIDE LOCATION OF
DEFENDANTS BENNETT
AND SOTELO

(Docket No. 40)

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against Salinas Valley State Prison officials. On July 3, 2008, after finding that the complaint, when liberally construed, stated cognizable claims for relief, the court ordered it served upon five named defendants, whom plaintiff indicated were located at Salinas Valley State Prison (“SVSP”). On October 15, 2008, three of these defendants, Correctional Officer V. Ortega, Correctional Officer D. Galindo, and Correctional Officer R. Guerra, appeared and filed a motion for an extension of time in which to file a dispositive motion. Good cause appearing, defendants’ motion is GRANTED IN PART. Defendants’ motion is due on or before **December 1, 2008**. No further extensions of time will be granted. All other provisions of the July 3, 2008, order of service remain in effect, including those regarding the schedule and briefing for the dispositive motion.

1 The two remaining defendants, Lieutenant J.D. Bennett and Sergeant A. Sotelo,
2 have not appeared in this action. On March 28, 2008, the Marshal returned unexecuted
3 the summonses for defendants Bennett and Sotelo noting that these defendants no longer
4 are located at SVSP.

5 In cases in which a plaintiff proceeds in forma pauperis, the “officers of the court
6 shall issue and serve all process.” 28 U.S.C. § 1915(d). The court must appoint the
7 Marshal to effect service, see Fed. R. Civ. P. 4(c)(2), and the Marshal, upon order of the
8 court, must serve the summons and the complaint, see Walker v. Sumner, 14 F.3d 1415,
9 1422 (9th Cir. 1994). Although a plaintiff who is incarcerated and proceeding in forma
10 pauperis may rely upon service by the Marshal, such plaintiff “may not remain silent and
11 do nothing to effectuate such service”; rather, “[a]t a minimum, a plaintiff should request
12 service upon the appropriate defendant and attempt to remedy any apparent defects of
13 which [he] has knowledge.” Rochon v. Dawson, 828 F.2d 1107, 1110 (5th Cir. 1987).

14 Here, plaintiff’s complaint has been pending for well over 120 days, and thus,
15 absent a showing of “good cause,” is subject to dismissal without prejudice as to the
16 unserved defendants. See Fed. R. Civ. P. 4(m). Plaintiff has not provided sufficient
17 information to allow the Marshal to locate and serve defendants Bennett and Sotelo, and
18 consequently plaintiff must remedy that situation or face dismissal of his claims against
19 these two defendants without prejudice. See Walker v. Sumner, 14 F.3d at 1421-22
20 (holding prisoner failed to show cause why prison official should not be dismissed under
21 Rule 4(m) where prisoner failed to show he had provided Marshal with sufficient
22 information to effectuate service).

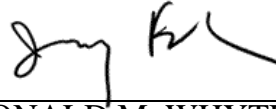
23 Accordingly, plaintiff must either himself effect service on defendants Bennett and
24 Sotelo or provide the court with an accurate current location for these defendants such
25 that the Marshal is able to effect service on them. If plaintiff fails to effect service upon
26 defendants Bennett and Sotelo, or provide the court with an accurate current location for
27 said defendants, within **thirty (30) days** of the date this order is filed, plaintiff’s claims
28 against said defendants will be dismissed without prejudice pursuant to Rule 4(m) of the

1 Federal Rules of Civil Procedure.

2 This order terminates docket number 40.

3 IT IS SO ORDERED.

4 DATED: 11/7/08



for

RONALD M. WHYTE
United States District Judge

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