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E-FILED - 3/25/10

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

RANDALL DEAN HOLMES,
Plaintiff,
v.
D. CASTELLAW, Warden; et al.,
Defendants.

No. C 09-3259 RMW (PR)
ORDER DIRECTING
PLAINTIFF TO LOCATE
UNSERVED DEFENDANTS

Plaintiff filed a pro se civil rights action pursuant to 42 U.S.C. § 1983. On August 25, 2009, the court ordered service of the stated cognizable claims upon named defendants. On January 4, 2010, the court received eight summons which were returned unexecuted. Specifically, defendants Correctional Officer French, Correctional Officer Wilber, Correctional Officer Navarro, and Correctional Officer Lujan were not served because the facility needed more information because there were multiple staff members with the same name. Also, Correctional Officer Cordich, Correctional Officer J. Bowman, and Correctional Officer Hishiowe were not served because the facility had no information on them. Accordingly, these eight defendants have not been served.

Here, plaintiff’s complaint has been pending for over 120 days, and thus, absent a showing of “good cause,” is subject to dismissal without prejudice as to the unserved defendants. See Fed. R. Civ. P. 4(m). In cases wherein the plaintiff proceeds in forma pauperis, the “officers

1 of the court shall issue and serve all process.” 28 U.S.C. 1915(d). The court must appoint the
2 Marshal to effect service, see Fed. R. Civ. P. 4(c)(2), and the Marshal, upon order of the court,
3 must serve the summons and the complaint, see Walker v. Sumner, 14 F.3d 1415, 1422 (9th Cir.
4 1994), overruled on other grounds by Sandin v. Connor, 515 U.S. 472 (1995). Although a
5 plaintiff who is incarcerated and proceeding in forma pauperis may rely on service by the
6 Marshal, such plaintiff “may not remain silent and do nothing to effectuate such service;” rather,
7 “[a]t a minimum, a plaintiff should request service upon the appropriate defendant and attempt to
8 remedy any apparent defects of which [he] has knowledge.” Rochon v. Dawson, 828 F.2d 1107,
9 1110 (5th Cir. 1987). If the marshal is unable to effectuate service through no fault of his own,
10 for example, because plaintiff failed to provide sufficient information or because the defendant is
11 not where plaintiff claims, and plaintiff is informed, plaintiff must seek to remedy the situation
12 or face dismissal. See Walker, 14 F.3d at 1421-22.

13 Because plaintiff has not provided sufficient information to allow the Marshal to locate
14 and serve the above named defendants, plaintiff must remedy the situation or face dismissal of
15 his claims against said defendants without prejudice. See Walker, 14 F.3d at 1421-22. Such
16 additional information may include a first name or first initial, the defendant’s current assigned
17 unit or assigned unit at the time of the allegations, or other more identifying information so that
18 the Marshal can locate and determine the particular defendant to be served.

19 Accordingly, plaintiff must provide the court with accurate and current information for
20 defendants Correctional Officer French, Correctional Officer Wilber, Correctional Officer
21 Navarro, Correctional Officer Lujan, Correctional Officer Cordich, Correctional Officer J.
22 Bowman, and Correctional Officer Hishiowe such that the Marshal is able to effect service upon
23 them. If plaintiff fails to provide the court with the accurate and current information so that the
24 Marshal can effect service, within **thirty (30) days** of the date this order is filed, plaintiff’s claim
25 against the above named defendants will be dismissed pursuant to Rule 4(m) of the Federal
26 Rules of Civil Procedure; the dismissal will be without prejudice to plaintiff refiling his
27 complaint with such information.

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1 IT IS SO ORDERED.

2 DATED: 3/24/10

Ronald M. Whyte

RONALD M. WHYTE
United States District Judge

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