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NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAVIER ZUBIATE,)	No. C 10-04127 JF (PR)
)	
Plaintiff,)	ORDER DIRECTING PLAINTIFF TO
)	PROVIDE COURT WITH LOCATION
vs.)	INFORMATION FOR UNSERVED
)	DEFENDANTS; DIRECTING CLERK
)	TO REISSUE SUMMONSES
MATTHEW CATE, et al.,)	
)	
Defendants.)	
_____)	

Plaintiff, a prisoner currently incarcerated at the Pelican Bay State Prison, filed the instant civil rights action in pro se pursuant to 42 U.S.C. § 1983 against prison officials for allegedly unconstitutional acts. The Court ordered service of Plaintiff’s complaint upon the named defendants. (See Docket No. 5.) The following defendants have not been served.

DISCUSSION

A. Insufficient Location Information

The summons for Defendants J. Beeson and J. M. Escobedo were returned unexecuted on February 25, 2011, with the following remark: “Subject is no longer at the

1 facility. The facility will not accept service.” (Docket Nos. 27 & 29.) Accordingly,
2 Beeson and Escobedo have not been served.

3 Although a plaintiff who is incarcerated and proceeding in forma pauperis may
4 rely on service by the Marshal, such plaintiff “may not remain silent and do nothing to
5 effectuate such service”; rather, “[a]t a minimum, a plaintiff should request service upon
6 the appropriate defendant and attempt to remedy any apparent defects of which [he] has
7 knowledge.” Rochon v. Dawson, 828 F.2d 1107, 1110 (5th Cir. 1987). Here, Plaintiff’s
8 complaint has been pending for over 120 days, and thus, absent a showing of “good
9 cause,” is subject to dismissal without prejudice. See Fed. R. Civ. P. 4(m). Plaintiff has
10 not provided sufficient information to allow the Marshal to locate and serve Defendants
11 Beeson and Escobedo , and consequently Plaintiff must remedy the situation or face
12 dismissal of his claims against these defendants without prejudice. See Walker v.
13 Sumner, 14 F.3d at 1421-22 (holding prisoner failed to show cause why prison official
14 should not be dismissed under Rule 4(m) where prisoner failed to show he had provided
15 Marshal with sufficient information to effectuate service). Accordingly, Plaintiff must
16 provide the Court with these Defendants’ accurate current location such that the Marshal
17 is able to effect service.

18 **B. Summonses Issued to Incorrect Location**

19 The summons for Defendants Matthew Cate, Robert Marquez, G. W. Basinger, J.
20 M. Perez, S. W. Wohlinend, and T. L. Rosenkrans were also returned unexecuted on
21 February 25, 2011. (Docket Nos. 23, 30, 26, 25, 24 & 28.) The Court notes that
22 summonses were issued to a place other than where Plaintiff had indicated they were
23 located on his complaint. Accordingly, the Court will reissue summons to these
24 defendants.

25
26 **CONCLUSION**

27 For the reasons stated above, the Court orders as follows:

- 28 1. Plaintiff must file notice and provide the Court with the accurate current

1 location of Defendants Beeson and Escobedo such that the Marshal is able to effect
2 service. If Plaintiff fails to provide the Court with an accurate current location for them
3 **within thirty (30) days** of the date this order is filed, Plaintiff's claims against Beeson
4 and Escobedo will be dismissed without prejudice pursuant to Rule 4(m) of the Federal
5 Rules of Civil Procedure.

6 2. The Clerk of the Court shall reissue summons and the United States
7 Marshal shall serve, without prepayment of fees, a copy of the complaint in this matter,
8 all attachments thereto, a copy of the Court Order filed February 17, 2011, (Docket No.
9 5), and a copy of this order upon **Defendants Matthew Cate, S. W. Wohlinend, and T.**
10 **L. Rosenkrans at the California Department of Corrections and Rehabilitation in**
11 **Sacramento, and Defendants Robert Marquez, G. W. Basinger and J. M. Perez** at the
12 **California State Prison, Corcoran.** The Clerk shall also mail a courtesy copy of this
13 order to the California Attorney General's Office.

14 3. Defendants shall file a motion for summary judgment or other dispositive
15 motion with respect to the claims in the complaint found to be cognizable, and briefing
16 shall proceed thereafter, in accordance with the schedule and instructions set forth in the
17 Court's Order of Service, filed February 17, 2011. (Docket No. 5.)

18 IT IS SO ORDERED.

19 DATED: 4/1/11

20 
21 _____
22 JEREMY FOGEL
23 United States District Judge
24
25
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

JAVIER A. ZUBIATE,
Plaintiff,

Case Number: CV10-04127 JF

CERTIFICATE OF SERVICE

v.

MATTHEW CATE, 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 4/22/11, 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.

Javier Zubiate J-83189
Pelican Bay State Prison
P.O. Box 7500
S.H.U. D-1-115
Crescent City, CA 95532

Dated: 4/22/11

Richard W. Wieking, Clerk