

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NOT FOR CITATION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 BASINGER AND
)	ROSENKRANS
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 Defendant G. W. Basinger was returned unexecuted on June 2, 2011, with the following remark: “No longer at the facility. Facility will not accept

1 service.” (Docket No. 57.) The summons was sent to the California State Prison,
2 Corcoran where Plaintiff indicated Basinger was located. (Id.) The summons for T. L.
3 Rosenkrans was also returned unexecuted the same day with the following remark: “The
4 subject is not at the address as listed. Summons was not accepted [and] returned.”
5 (Docket No. 56.) The summons was sent to the California Department of Corrections and
6 Rehabilitation, Sacramento where Plaintiff indicated Rosenkrans was located. (Id.)
7 Accordingly, Basinger and Rosenkrans have not been served.

8 Although a plaintiff who is incarcerated and proceeding in forma pauperis may
9 rely on service by the Marshal, such plaintiff “may not remain silent and do nothing to
10 effectuate such service”; rather, “[a]t a minimum, a plaintiff should request service upon
11 the appropriate defendant and attempt to remedy any apparent defects of which [he] has
12 knowledge.” Rochon v. Dawson, 828 F.2d 1107, 1110 (5th Cir. 1987). Here, Plaintiff’s
13 complaint has been pending for over 120 days, and thus, absent a showing of “good
14 cause,” is subject to dismissal without prejudice. See Fed. R. Civ. P. 4(m). Plaintiff has
15 not provided sufficient information to allow the Marshal to locate and serve Basinger and
16 Rosenkrans, and consequently Plaintiff must remedy the situation or face dismissal of his
17 claims against these defendants without prejudice. See Walker v. Sumner, 14 F.3d at
18 1421-22 (holding prisoner failed to show cause why prison official should not be
19 dismissed under Rule 4(m) where prisoner failed to show he had provided Marshal with
20 sufficient information to effectuate service). Accordingly, Plaintiff must provide the
21 Court with these Defendants’ accurate current location such that the Marshal is able to
22 effect service.

23 24 CONCLUSION

25 Plaintiff must file notice and provide the Court with the accurate current location
26 of Basinger and Rosenkrans such that the Marshal is able to effect service. **If Plaintiff**
27 **fails to provide the Court with an accurate current location for them within thirty**
28 **(30) days of the date this order is filed, Plaintiff’s claims against Basinger and**

1 **Rosenkrans will be dismissed without prejudice pursuant to Rule 4(m) of the**
2 **Federal Rules of Civil Procedure.**

3 IT IS SO ORDERED.

4 DATED: 6/8/11


JEREMY FOGEL
United States District Judge

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 6/24/11, 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: 6/24/11

Richard W. Wieking, Clerk