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NOT FOR CITATION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
vs.)	IDENTIFICATION INFORMATION
)	FOR UNSERVED DEFENDANTS
)	
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. More Identification Information Needed

The summonses 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.) The Court directed
2 Plaintiff to provide the Court with these Defendants’ accurate current location such that
3 the Marshal is able to effect service. (Docket No. 31.) On May 27, 2011, Plaintiff filed
4 location information where he alleged these Defendants were located. (Docket No. 52.)
5 Accordingly, the Clerk reissued summonses to Defendants Beeson and Escobedo, at the
6 California Department of Corrections in Sacramento. (Docket Nos. 53 & 54.) On June
7 15, 2011, the summonses for Beeson and Escobedo were again returned unexecuted, with
8 remarks stating that there is more than one “J. Beeson” and more than one “J. Escobedo”
9 at the location, and that more information was needed to effect service. (Docket Nos. 65
10 & 65.)

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

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1 **CONCLUSION**

2 Plaintiff must file notice and provide the Court with additional identification
3 information for Defendants Beeson and Escobedo, *e.g.*, their first names and/or badge
4 numbers, such that the Marshal is able to effect service. If Plaintiff fails to provide the
5 Court with this information **within thirty (30) days** of the date this order is filed,
6 Plaintiff's claims against Beeson and Escobedo will be dismissed without prejudice
7 pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

8 IT IS SO ORDERED.

9 DATED: 7/6/11

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11 _____
12 JEREMY FOGEL
13 United States District Judge
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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 7/6/11, 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: 7/6/11

Richard W. Wieking, Clerk