

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

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

CESAR ALFARO,	)	No. C 10-04416 EJD (PR)
	)	
Plaintiff,	)	ORDER DISMISSING DEFENDANT J.
	)	A. McKINNEY; DIRECTING CLERK
vs.	)	TO REISSUE SUMMONSES
	)	
D. HIGGERSON, et al.,	)	
	)	
Defendants.	)	
_____	)	

Plaintiff, an inmate at the Pelican Bay State Prison (“PBSP”) in Crescent City, California, filed a pro se civil rights complaint under 42 U.S.C. § 1983, challenging the conditions of his confinement. The Court ordered service of Plaintiff’s complaint upon the named defendants. (See Docket No. 4.) On March 14, 2011, the summonses for Defendants D. Spear, Everett W. Fisher, D. T. Hawkes, Daniel L. Smith, McKinney and Marquez were returned with explanatory remarks. (See Docket Nos. 13, 14, 15, 16, 17 & 23.) The Court directed Plaintiff to provide accurate current locations for Spear, Fisher, Hawkes and Smith, and more identification information for McKinney and Marquez or face dismissal of the claims against these Defendants with prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. (See Docket No. 25.)

Plaintiff has filed a response to the Court’s order, providing a current location for Spear, Fisher, Smith, and Hawkes. (Docket Nos. 28 & 29.) Instead of providing additional identification information for Marquez, Plaintiff has provided a different

1 location where he may be served. (Docket No. 28.) With respect to McKinney, Plaintiff  
2 states that he is no longer employed by CDCR and that no badge number is available  
3 through PBSP. (Docket No. 29.) Accordingly, McKinney has not been served. The  
4 Court will reissue summons to Spear, Fisher, Smith, Hawkes and Marquez with the  
5 information provided by Plaintiff. However, because Plaintiff has failed to provide an  
6 accurate current location for McKinney, who is no longer at PBSP, the claims against this  
7 defendant are DISMISSED without prejudice pursuant to Rule 4(m).

8  
9 **CONCLUSION**

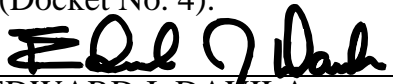
10 For the reasons stated above, the Court orders as follows:

11 1. All claims against Defendant J. A. McKinney are DISMISSED without  
12 prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. The Clerk shall  
13 terminate this McKinney from this action.

14 2. The Clerk of the Court shall reissue summons and the United States  
15 Marshal shall serve, without prepayment of fees, a copy of the complaint in this matter,  
16 all attachments thereto, a copy of the Court Order filed February 7, 2011, (Docket No. 4),  
17 and a copy of this order upon **Defendants D. Spear, Everett W. Fisher, Daniel L.**  
18 **Smith and Special Agent Marquez** at the "Office of Correctional Safety Division of  
19 Adult Institutions Dept. Of Corrections and Rehabilitation," (see Docket No. 28), and  
20 upon **Defendant D. T. Hawkes** at the Deuel Vocational Institution, (see Docket No. 29).  
21 The Clerk shall also mail a courtesy copy of this order to the California Attorney  
22 General's Office.

23 3. Defendants shall file a motion for summary judgment or other dispositive  
24 motion with respect to the claims in the complaint found to be cognizable, and briefing  
25 shall proceed thereafter, in accordance with the schedule and instructions set forth in the  
26 Court's Order of Service, filed February 7, 2011, (Docket No. 4).

27 DATED: June 8, 2011

28   
EDWARD J. DAVILA  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

CESAR ALFARO,  
Plaintiff,

Case Number: CV10-04416 EJD

**CERTIFICATE OF SERVICE**

v.

D. HIGGERSON, 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 6/10/2011, 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.

Cesar Alfaro E-68257  
Pelican Bay State Prison  
P. O. Box 7500  
Crescent City, CA

Dated: 6/10/2011

Richard W. Wieking, Clerk  
/s/ By: Elizabeth Garcia, Deputy Clerk