

FILED

DEC 27 2012

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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

DANNY GEROME YOUNG,

Plaintiff,

vs.

ANTHONY HEDGPETH, et al.,

Defendants.

No. C 11-02739 EJD (PR)

ORDER DISMISSING DEFENDANT
MUHAMMAD; DENYING MOTION
FOR APPOINTMENT OF COUNSEL

Plaintiff, a California inmate proceeding *pro se*, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. The Court ordered service of Plaintiff's complaint. (Doc. No. 6.) Summonses for Defendant Muhammad have been unexecuted. Plaintiff was directed to provide the Court with current, locate information for Defendant Muhammad. (Doc. Nos. 55, 83.) Plaintiff has notified the Court that he has no additional information to provide as to the whereabouts of Dr. Rodney Muhammad. (Doc. No. 86). Accordingly, Defendant Muhammad has not been served.

Although a plaintiff who is incarcerated and proceeding *in forma pauperis* may rely on service by the Marshal, such plaintiff "may not remain silent and do nothing to effectuate such service"; rather, "[a]t a minimum, a plaintiff should request service upon the appropriate defendant and attempt to remedy any apparent defects of which [he] has

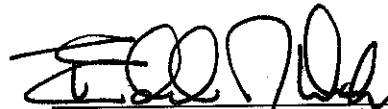
1 knowledge.” *Rochon v. Dawson*, 828 F.2d 1107, 1110 (5th Cir. 1987). Here, Plaintiff’s
2 complaint has been pending for over 120 days, and thus, absent a showing of “good
3 cause,” his claims against Defendant Muhammad are subject to dismissal without
4 prejudice. See Fed. R. Civ. P. 4(m). Plaintiff was directed to provide the Court with
5 current, locate information for Defendant Muhammad where he could be served by the
6 Marshal. Plaintiff is unable to provide sufficient to effectuate service. Accordingly, the
7 claims against Defendant Muhammad are **DISMISSED** without prejudice pursuant to
8 Rule 4(m). **The Clerk shall terminate Defendant Muhammad from this action.**

9 Plaintiff also request appointment of counsel. (Doc. No. 86.) Plaintiff’s motion
10 for appointment of counsel is **DENIED** without prejudice for lack of exceptional
11 circumstances. See *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997); *Terrell v.*
12 *Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991); *Wilborn v. Escalderon*, 789 F.2d 1328,
13 1331 (9th Cir. 1986).

14 IT IS SO ORDERED.

15 DATED: _____

12/21/12



16 EDWARD J. DAVILA
17 United States District Judge
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

DANNY GEROME YOUNG et al,
Plaintiff,

Case Number: CV11-02739 EJD

CERTIFICATE OF SERVICE

v.

ANTHONY HEDGPETH et al,
Defendant.

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 December 27, 2012, 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.

Danny Gerome Young C-53235
California State Prison
Los Angeles County
P. O. Box 44750
Lancaster, CA 93539

Dated: December 27, 2012

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