

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

DANIEL TREGLIA,) No. C 12-2522 LHK (PR)
Plaintiff,)
v.) ORDER DIRECTING PLAINTIFF
) TO PROVIDE COURT WITH
) MORE INFORMATION FOR
) DEFENDANT NURSE SMITH
SCOTT KERNAN, et al.,)
Defendants.)

Plaintiff, a California state prisoner proceeding *pro se*, filed an amended civil rights action under 42 U.S.C. § 1983, against prison officials at Pelican Bay State Prison. (“PBSP”). On September 7, 2012, the Court found that Plaintiff a stated cognizable claim of deliberate indifference against Defendant Nurse Smith and issued an order of service. (Docket No. 4.) On September 17, 2012 a notice of lawsuit and request for waiver of service of summons was mailed to Defendant Nurse Smith at PBSP. (Docket No. 8.) The litigation office technician at PBSP returned the documents sent to Defendant Nurse Smith because he was “unable to identify a ‘Nurse Smith’ as working at Pelican Bay State Prison.” (Docket No. 47.) Defendant Nurse Smith remains unserved.

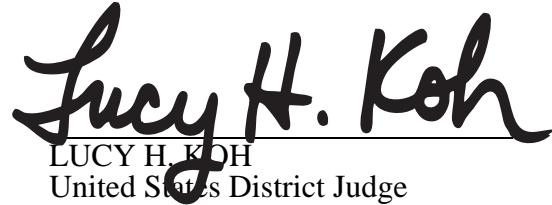
Although a plaintiff who is incarcerated and proceeding *in forma pauperis* may rely on service by the Marshal, such plaintiff “may not remain silent and do nothing to effectuate such service”; rather, “[a]t a minimum, a plaintiff should request service upon the appropriate defendant and attempt to remedy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

1 *Dawson*, 828 F.2d 1107, 1110 (5th Cir. 1987). Here, Plaintiff's complaint has been pending for
2 over 120 days, and thus, absent a showing of "good cause," is subject to dismissal without
3 prejudice. *See Fed. R. Civ. P. 4(m)*. Because Plaintiff has not provided sufficient information to
4 allow the Marshal to locate and serve Defendant Nurse Smith, Plaintiff must remedy the
5 situation or face dismissal of his claims against Defendant Nurse Smith without prejudice. *See*
6 *Walker v. Sumner*, 14 F.3d 1415, 1421-22 (9th Cir. 1994) (holding prisoner failed to show cause
7 why prison official should not be dismissed under Rule 4(m) where prisoner failed to show he
8 had provided Marshal with sufficient information to effectuate service).

9 Plaintiff must file notice and provide the Court with more identification information for
10 Defendant Nurse Smith such that the Marshal is able to effect service. **If Plaintiff fails to
11 provide the Court with more identification information for Defendant Nurse Smith within
12 thirty (30) days of the date this order is filed, Plaintiff's claim against this Defendant will
13 be dismissed without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil
14 Procedure.**

15 IT IS SO ORDERED.

16 DATED: 4/9/13



LUCY H. KOH
United States District Judge