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**FILED**

FEB 21 2014

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

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

ANTHONY W. JOHNSON, JR.,  
Plaintiff,  
v.  
R. MACHUCA, JR., et al.,  
Defendants.

No. C 13-00596 EJD (PR)  
ORDER DISMISSING CLAIMS  
AGAINST DEFENDANT T. SUMBLIN


On February 11, 2013, Defendants filed a notice of removal to federal court, removing Plaintiff's civil complaint against officials at Salinas Valley State Prison ("SVSP") from Monterey Superior Court to this Court. Plaintiff is a California inmate currently incarcerated at the Pelican Bay State Prison. On May 23, 2013, the Court ordered service of Plaintiff's complaint upon the named defendants. (See Docket No. 8.) On July 19, 2013, the Litigation Coordinator at SVSP sent a letter to the Court stating that Defendant T. Sumblin had resigned. (Docket No. 21.) At the Court's request, the Litigation Coordinator provided the last known address for Defendant T. Sumblin. (Docket No. 35.) The next day, the Clerk reissued the Notice of Lawsuit and Request for Waiver of Service of Summons to Defendant Sumblin. (Docket No. 36.) On November 5, 2013, after having received no response from Defendant T. Sumblin, the Court directed

1 the Clerk to issue a summons to Defendant T. Sumblin. (Docket No. 43.) On November  
2 29, 2013, the summons was returned unexecuted because Defendant T. Sumblin no  
3 longer lived at the address to which the summons was issued. (Docket No. 48.) On  
4 January 2, 2014, the Court issued an order directing Plaintiff to file a notice providing the  
5 Court with an accurate and current address for Defendant T. Sumblin such that the  
6 Marshal is able to effect service. (Docket No. 51.) To date, the Court has received no  
7 information from Plaintiff regarding the whereabouts of Defendant T. Sumblin thus  
8 Defendant T. Sumblin remains unserved.

9 Although a plaintiff who is incarcerated and proceeding in forma pauperis may  
10 rely on service by the Marshal, such plaintiff "may not remain silent and do nothing to  
11 effectuate such service"; rather, "[a]t a minimum, a plaintiff should request service upon  
12 the appropriate defendant and attempt to remedy any apparent defects of which [he] has  
13 knowledge." Rochon v. Dawson, 828 F.2d 1107, 1110 (5th Cir. 1987). Here, Plaintiff's  
14 complaint has been pending for over 120 days, and thus, absent a showing of "good  
15 cause," his claims against Defendant T. Sumblin are subject to dismissal without  
16 prejudice. See Fed. R. Civ. P. 4(m). Plaintiff was directed to file a notice providing the  
17 Court with an accurate and current address for Defendant T. Sumblin such that the  
18 Marshal is able to effect service. He has failed to do so. Accordingly, the claims against  
19 Defendant Sumblin are **DISMISSED** without prejudice pursuant to Rule 4(m). The Clerk  
20 shall terminate said defendant from this action.

21  
22 DATED: \_\_\_\_\_

2/21/14

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24 \_\_\_\_\_  
25 EDWARD J. DAVILA  
26 United States District Judge  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

ANTHONY W. JOHNSON, JR.,

Plaintiff,

v.

R. MACHUCA, JR., et al.,

Defendants.

Case Number CV 13-00596 EJD (PR)

**CERTIFICATE OF SERVICE**

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 2/21/14, 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) inter-office delivery receptacle located in the Clerk's office.

**Anthony Wayne Johnson**  
F58411  
Pelican Bay State Prison  
P. O. Box 7500  
Crescent City, CA 95532

DATED: 2/21/14

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