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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**
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10 RONALD W. SINGSON,

11 Plaintiff,

12 vs.

13 E. MARRERO; W. SUGLICH,

14 Defendants.

CASE NO. 10cv2362-WQH-BLM

ORDER

HAYES, Judge:

15 The matter before the Court is the motion for confirmation of proof of service. (ECF
16 No. 12).

17 **BACKGROUND**

18 On November 15, 2010, Plaintiff, a state inmate currently incarcerated at the Richard
19 J. Donovan Correctional Facility in San Diego, California, and proceeding pro se, initiated this
20 action by filing a Complaint in this Court and paying the full \$350 filing fee. (ECF No. 1).

21 On January 12, 2011, the Court issued an Order dismissing the Complaint for failure
22 to state a claim pursuant to 28 U.S.C. § 1915A. (ECF No. 4).

23 On March 3, 2011, Plaintiff filed a First Amended Complaint, which is the operative
24 pleading in this action. (ECF No. 6). The First Amended Complaint alleges claims pursuant
25 to 42 U.S.C. § 1983 against two employees of the Richard J. Donovan Correctional Facility.

26 On April 11, 2011, the Court issued an Order directing the Clerk to issue a summons
27 as to the First Amended Complaint. (ECF No. 7). The Court stated:

28 [B]ecause Plaintiff is not proceeding *in forma pauperis*, he is not entitled to U.S.
Marshal service on his behalf. Plaintiff is responsible for effecting proper

1 service on Defendants Marrero and Suglich. If Plaintiff fails to properly serve
2 these Defendants within 120 days from the date this Order is filed, the Court will
dismiss this action pursuant to FED. R. CIV. P. 4(m).

3 *Id.* at 2.

4 On May 19, 2011, Plaintiff filed two documents entitled, "Proof of Service by Mail."
5 (ECF Nos. 9, 10). The documents each state: "The summons and copy of the complaint was
6 sent to the above named defendant via the United States Postal Service by way of
7 certified/registered mail pursuant to the Federal Code of Civil Procedure, Rule 5(c)." (ECF
8 No. 9 at 3; ECF No. 10 at 3).

9 On July 20, 2011, Plaintiff filed a document addressed to the Clerk of the Court, which
10 states:

11 I served both defendants, E. Marrero and W. Suglich via the United States mail,
12 registered and return receipt requested and received, and served upon this Court.
13 To date I have not received any type of confirmation as to this issue. If there is
some sort of discrepancy I will take further action and rectify the matter.

14 (ECF No. 12 at 1). The Court construes this filing as a motion for confirmation of proof of
15 service.

16 DISCUSSION

17 "A federal court is without personal jurisdiction over a defendant unless the defendant
18 has been served in accordance with Fed. R. Civ. P. 4." *Travelers Cas. & Sur. Co. of Am. v.*
19 *Brenneke*, 551 F.3d 1132, 1135 (9th Cir. 2009) (quotation omitted). Rule 4 provides that "[a]
20 summons shall be served together with a copy of the [amended] complaint," Fed. R. Civ. P.
21 4(c)(1), and that service may be effected either through the waiver procedures outlined in
22 Federal Rule of Civil Procedure 4(d), or by one of the methods set forth in Federal Rule of
Civil Procedure 4(e).

23 Under Federal Rule of Civil Procedure 4(e), an individual defendant may be served with
24 process by "(1) following state law for serving a summons in an action brought in courts of
25 general jurisdiction in the state where the district court is located or where service is made,"
26 or "(2) doing any of the following: (A) delivering a copy of the summons and of the complaint
27 to the individual personally; (B) leaving a copy of each at the individual's dwelling or usual
28 place of abode with someone of suitable age and discretion who resides there; or (C) delivering

1 a copy of each to an agent authorized by appointment or by law to receive service of process.”
2 Fed. R. Civ. P. 4(e). Service by mail is not allowed under Rule 4. Although Rule 4(e) allows
3 a plaintiff to utilize methods allowed by state law, California law does not allow for service
4 of process by simply mailing a copy of the summons and complaint to a defendant.¹ See
5 generally Cal. Code Civ. P. §§ 415.10, 415.20, 415.30, 415.40 & 415.50 (outlining the
6 permissible methods of effectuating service under California law). A plaintiff must be careful
7 to follow all the steps that apply to the particular procedure he chooses.

8 In this case, the proofs of service filed by Plaintiff fail to indicate that service was
9 effectuated by one of the permissible procedures set forth in Rule 4 or under California law.
10 Instead, the proofs of service indicate that the Defendants were served by mail pursuant to
11 Federal Rule of Civil Procedure 5(c). Rule 5 governs service of all filings *after* a defendant has
12 been properly served with process pursuant to Rule 4. Because there is no indication that
13 Defendants have been properly served pursuant to Rule 4, Rule 5 does not yet apply in this
14 action. Accordingly, the motion for confirmation of proof of service is denied, and the Clerk
15 of the Court shall strike the proofs of service from the record.


16 CONCLUSION

17 IT IS HEREBY ORDERED that the motion for confirmation of proof of service is
18 DENIED. (ECF No. 12). The Clerk of the Court shall STRIKE the proofs of service from the
19 record. (ECF Nos. 9, 10). The Court grants Plaintiff an extension of SIXTY (60) DAYS from
20 the date of this Order to effect proper service upon Defendants. If Plaintiff fails to serve
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23 ¹ To use the mail for service in California, a plaintiff must use the specific notice and
24 acknowledgment of receipt procedure described in California Code of Civil Procedure §
25 415.30. Under that method, the following must be mailed first class to the defendant by
26 someone other than the plaintiff: (a) a copy of the summons and complaint, or in this case—the
27 First Amended Complaint, (b) two copies of the notice and acknowledgment form, and (c) a
28 return envelope, postage prepaid, addressed to the sender. The notice and acknowledgment
form must be in “substantially the form” as that in the text of § 415.30(b). If a defendant mails
back the form, service is deemed complete upon his execution of the written acknowledgment
of receipt of summons. See Cal. Code Civ. Proc. § 415.30(c). If a defendant does not mail
back the form within twenty (20) days, the plaintiff must serve him by some other means, *id.*
at § 415.30(d), such as one of those methods permitted by Federal Rule of Civil Procedure
4(e).

1 Defendants within sixty days, the Court will dismiss this action pursuant to Federal Rule of
2 Civil Procedure 4(m).

3 DATED: August 22, 2011

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5 **WILLIAM Q. HAYES**
6 United States District Judge
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