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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GENGHIS KHAN ALI STEVENSON,
Plaintiff,

v.

GREGORY BLAKE, et al.,
Defendants.

Civil No. 11-0103-LAB(WVG)

ORDER:

- (1) DENYING PLAINTIFF’S MOTION FOR APPOINTMENT OF COUNSEL (DOC. # 8)**
- (2) DIRECTING U.S. MARSHAL TO REATTEMPT SERVICE ON DEFENDANT GREGORY BLAKE**

On January 18, 2011, Genghis Khan Ali Stevenson (hereafter “Plaintiff”), a state prisoner currently incarcerated at the Kern Valley State Prison in Delano, California, and proceeding *pro se*, filed a civil rights Complaint pursuant to 42 U.S.C. § 1983. On April 4, 2011, the Court found that the claims in Plaintiff’s Complaint were sufficient to survive the initial screening required by 28 U.S.C. §§ 1915(e)(2) and 1915A(b), and directed the United States Marshal Service (“USMS”) to effect service on Plaintiff’s behalf pursuant to 28 U.S.C. § 1915(d) and FED.R.CIV.P. 4(c)(3).

On the following day, the Clerk issued a summons and prepared an “IFP package,” including certified copies of Plaintiff’s Complaint, a U.S. Marshal Form 285 (“USMS Form 285”) for each Defendant named in the Complaint, and a copy of the Court’s Order granting

1 Plaintiff leave to proceed IFP. *See Puett v. Blandford*, 895 F.2d 630, 634 (9th Cir. 1990) (“An
2 incarcerated pro se plaintiff proceeding *in forma pauperis* is entitled to rely on the U.S.
3 Marshal for service of summons and complaint.”); 28 U.S.C. § 1915(d); FED.R.CIV.P. 4(a),
4 (c)(3).

5 The Summons to Defendant Gregory Blake (hereafter “Blake”) was returned
6 unexecuted. According to the USMS, it was informed by the litigation coordinator at
7 Calipatria State Prison that Defendant Blake was retired and therefore not employed at that
8 institution. On May 9, 2011, Plaintiff requested that an attorney be appointed for him so that
9 the appointed attorney could serve Defendant Blake. The Court, DENIES Plaintiff’s Motion
10 for Appointment of Counsel, but construes the Motion as a Motion for Assistance In Serving
11 Plaintiff’s Complaint on Defendant Blake.

12 I. **Plaintiff’s Motion for Appointment of Counsel is DENIED.**

13 “[T]here is no absolute right to counsel in civil proceedings.” Hedges v. Resolution
14 Trust Corp. (In re Hedges), 32 F.3d 1360, 1363 (9th Cir. 1994) (citation omitted). Thus,
15 federal courts do not have the authority “to make coercive appointments of counsel.” Mallard
16 v. United States District Court, 490 U.S. 296, 310 (1989); see also United States v.
17 \$292,888.04 in U.S. Currency, 54 F.3d 564, 569 (9th Cir. 1995). Districts courts have
18 discretion, however, pursuant to 28 U.S.C. § 1915(e)(1),^{1/} to “request” that an attorney
19 represent indigent civil litigants upon a showing of exceptional circumstances. See Terrell v.
20 Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Burns v. County of King, 883 F.2d 819, 823 (9th
21 Cir. 1989). “To show exceptional circumstances the litigant must demonstrate the likelihood
22 of success and complexity of the legal issues involved.” Burns, 883 F.2d at 823 (citation
23 omitted); Hedges, 32 F.3d at 1363; Wood v. Housewright, 900 F.2d 1332, 1335 (9th Cir.
24 1990). Neither the likelihood of success nor the complexity of the case are dispositive; both
25 must be considered. Terrell, 935 F.2d at 1017; Wilborn v. Escalderon, 789 F.2d 1328, 1331
26 (9th Cir. 1986).

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28 ¹ 28 U.S.C. § 1915 was substantially amended by the Prison Litigation Reform Act of
1995, Pub. L. No. 104-134, Title VIII, §§ 801-10, 110 Stat. 1321-66 to 1321-77 (1996).
Section 1915(e)’s counsel provisions were formerly codified at 28 U.S.C. § 1915(d).

1 Here, it appears that plaintiff has a sufficient grasp of his case, the legal issues involved,
2 and is able to adequately articulate the basis of his Complaint. Plaintiff has not demonstrated
3 “exceptional circumstances” required for the Court to appoint counsel for him. Under these
4 circumstances, the Court DENIES Plaintiff’s Motion for Appointment of Counsel because it
5 is not warranted by the interests of justice. LaMere v. Risley, 827 F.2d 622, 626 (9th Cir.
6 1987).

7 II. FED.R.CIV.P. 4 Service Rules

8 Rule 4 of the Federal Rules of Civil Procedure provides that:

9 [i]f a defendant is not served within 120 days after the complaint
10 is filed, the court – on motion or on its own after notice to the
11 plaintiff – must dismiss the action without prejudice against that
12 defendant or order that service be made within a specified time.
13 But if the plaintiff shows good cause for the failure, the court
14 must extend the time for service for an appropriate period.
15 FED.R.CIV.P. 4(m).

16 In cases involving a plaintiff proceeding IFP, a United States Marshal, upon order of
17 the court, shall serve the summons and the complaint. FED.R.CIV.P. 4(c)(3); 28 U.S.C. §
18 1915(d). “[A]n incarcerated pro se plaintiff proceeding in forma pauperis is entitled to rely
19 on the U.S. Marshal for service of the summons and complaint and ... should not be penalized
20 by having his action dismissed for failure to effect service where the U.S. Marshal or the court
21 clerk has failed to perform his duties.” *Walker v. Sumner*, 14 F.3d 1415, 1422 (9th Cir. 1994)
22 (quoting *Puett*, 912 F.2d at 275), *abrogated on other grounds by Sandin v. Conner*, 515 U.S.
23 472 (1995). “So long as the prisoner has furnished the information necessary to identify the
24 defendant, the marshal’s failure to effect service is ‘automatically good cause...’” *Walker*, 14
25 F.3d at 1422 [quoting *Sellers v. United States*, 902 F.2d 598, 603 (7th Cir. 1990)]. However,
26 where a *pro se* plaintiff fails to provide the Marshal with accurate and sufficient information
27 to effect service of the summons and complaint, the court’s *sua sponte* dismissal of the
28 unserved defendants is appropriate. *Walker*, 14 F.3d at 1421-22; *see also Rochon v. Dawson*,
828 F.2d 1107, 1110 (5th Cir. 1987) (noting that 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”). Here, because Plaintiff has not yet been able to ascertain the proper location
2 where Defendant Blake may now be served, he must remedy the situation or face dismissal of
3 his claims against Defendant Blake. *See Walker*, 14 F.3d at 1421-22 (holding prisoner failed
4 to show cause why prison official should not be dismissed under Rule 4(m) where prisoner
5 failed to show he had provided Marshal with sufficient information to effectuate service).

6 Accordingly, as long as Defendant Blake’s current and/or forwarding addresses can be
7 easily ascertained by reference to the CDCR’s personnel records, Plaintiff is entitled to rely
8 on the U.S. Marshal to effect service upon Defendant Blake on his behalf. *See Puett*, 912 F.2d
9 at 275. The Court hereby directs Defendants’ attorney to contact the California Department
10 of Corrections’ Legal Affairs Division, and provide Defendant Blake’s current and/or
11 forwarding address within the California Department of Corrections records or possession, and
12 to forward that address to the USMS in a confidential memorandum.

13 III. Conclusion and Order

14 Accordingly, the Court hereby:

15 1. DENIES Plaintiff’s Motion for Appointment of Counsel and ORDERS Defendants’
16 attorney to provide the forwarding addresses for Defendant Gregory Blake to the U.S. Marshal
17 in a *confidential memorandum* indicating that the summonses and Complaint are to be
18 delivered to that address. Defendants’ attorney shall provide the U.S. Marshal with any such
19 information on or before June 13, 2011.

20 Within thirty (30) days of receipt of any available address from Defendants’ attorney,
21 the Court ORDERS the U.S. Marshal to serve a copy of Plaintiff’s Complaint and summons
22 upon Defendant Gregory Blake. All costs of service shall be advanced by the United States
23 pursuant to the Court’s April 4, 2011 Order Granting Plaintiff Leave To Proceed IFP and
24 directing service pursuant to 28 U.S.C. § 1915(d) and FED.R.CIV.P. 4(c)(3).

25 IT IS FURTHER ORDERED that the Clerk of the Court provide a copy of: (1) the
26 Court’s April 4, 2011 Order; (2) this Order; (3) the Complaint, summons and a blank U.S.

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1 Marshal Form 285 to Defendants' attorney for purposes of re-attempting service as to
2 Defendant Gregory Blake.

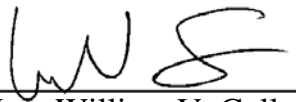
3 IT IS SO ORDERED.

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5 DATED: May 11, 2011

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Hon. William V. Gallo
U.S. Magistrate Judge

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