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4 UNITED STATES DISTRICT COURT
5 SOUTHERN DISTRICT OF CALIFORNIA
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7 RICHARD ARMENTA,
8 CDCR #G-39318

Plaintiff,

9 vs.
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11 D. PARAMO, Warden, et al.,

12 Defendants.
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Case No.: 3:16-cv-02931-BTM-KSC

ORDER:

**1) DENYING DUPLICATIVE
MOTION FOR LEAVE TO FILE
AMENDED COMPLAINT
AS MOOT
[ECF No. 29]**

**2) DIRECTING DEPUTY
ATTORNEY GENERAL TO
PROVIDE DEFENDANTS'
FORWARDING ADDRESSES IN
CONFIDENTIAL MEMO TO U.S.
MARSHAL IN ORDER TO EFFECT
SERVICE PURSUANT TO 28 U.S.C.
§ 1915(d) AND Fed. R. Civ. P. 4(c)(3)**

AND

**3) GRANTING REMAINING
DEFENDANTS' EX PARTE
MOTION FOR EXTENSION OF
TIME TO FILE A RESPONSIVE
PLEADING
[ECF No. 33]**

26 RICHARD ARMENTA (“Plaintiff”), currently incarcerated at California State
27 Prison-Los Angeles County, is proceeding pro se and in forma pauperis (“IFP”) in the
28 civil rights action filed pursuant 42 U.S.C. § 1983.

1 **I. Procedural History**

2 On July 21, 2017, the Court granted Plaintiff leave to file an Amended Complaint,
3 denied Defendant Covell, Frost, Lopez, Paramo, Salinas, Sanchez, Stratton, Williams, and
4 Zamora’s pending Motion to Dismiss his original Complaint without prejudice as moot in
5 light of Plaintiff’s anticipated amendment, and cautioned Plaintiff of his need to properly
6 serve two remaining parties (Murphy and Wiley). See ECF No. 23. On August 7, 2017,
7 the Court further granted Plaintiff an additional 60 days leave from the date his Amended
8 Complaint was filed to serve Defendants Murphy and Wiley, should he choose to re-
9 name them as parties. See ECF No. 28.

10 On August 18, 2017, Plaintiff filed yet another copy of his previously granted
11 Motion for Leave to Amend (ECF No. 29), together with his Amended Complaint (ECF
12 No. 30). Plaintiff’s Amended Complaint re-alleges Eighth and Fourteenth Amendment
13 due process claims as to all previously named Defendants, including Wiley and Murphy.
14 (Id. at 2-4.)

15 On August 23, 2017, having been served with Plaintiff’s Amended Complaint,
16 counsel for Defendants Covell, Frost, Lopez, Paramo, Salinas, Sanchez, Stratton,
17 Williams, and Zamora filed an ex parte Motion for Extension of Time in which to file
18 their responsive pleading (ECF No. 33). Defendants request additional time, in part, in
19 order to give Plaintiff additional time to serve Wiley and Murphy via the U.S. Marshal,
20 and also to permit them the opportunity to properly review Plaintiff’s 76-page Amended
21 Complaint and to prepare and file one “uniform” and non-duplicative responsive pleading
22 as to all named and served parties. (Id. at 2.)

23 **II. Plaintiff’s Motion for Leave to Amend**

24 Plaintiff filed what appears to be a photocopy of his previous Motion for Leave to
25 Amend (ECF Nos. 20, 29) together with his Amended Complaint (ECF No. 30), despite
26 the fact that the Court had already granted him leave to amend (ECF No. 23). Because no
27 further leave to amend is required, and Plaintiff’s Amended Complaint has already been
28 timely filed, his subsequent duplicate Motion is DENIED as moot and unnecessary.

1 **III. U.S. Marshal Service**

2 As noted above, the Court has also granted Plaintiff an additional 60 days leave
3 from the date his Amended Complaint was filed on August 18, 2017, to re-attempt
4 service via the U.S. Marshal upon Defendants G. Murphy and G. Wiley pursuant to FED.
5 R. Civ. P. 4(m). See ECF No. 28 at 2. In his Amended Complaint, Plaintiff alleges
6 Murphy is employed as a Lieutenant Appeals Examiner in the CDCR’s “Chief of
7 Appeals Office” in Sacramento, California. (ECF No. 30 at 3). Plaintiff claims G. Wiley
8 was “employed as a nurse” at Richard J. Donovan Correctional Facility (“RJD”) “on or
9 about 3-3-15.” (Id. at 3, 6-7.)

10 Plaintiff’s previous attempts at serving these two parties were unsuccessful. As to
11 Defendant Murphy, the U.S. Marshal returned proof of service as unexecuted on May 18,
12 2017, with a notation that the litigation coordinator at RJD was “unable to confirm that
13 there is now or ever has been a G. Murphy employed at [RJD]” and that she was
14 therefore “not authorized to accept service of his/her behalf.” (ECF No. 6). There is no
15 proof of any unsuccessful or successful attempt by the U.S. Marshal as to G. Wiley,
16 alleged to be a nurse practitioner at RJD, in the docket whatsoever.¹

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19 ¹ The court may take judicial notice of its own records, however, see *Molus v. Swan*,
20 Civil Case No. 3:05-cv-00452-MMA-WMc, 2009 WL 160937, *2 (S.D. Cal. Jan. 22,
21 2009) (citing *United States v. Author Services*, 804 F.2d 1520, 1523 (9th Cir. 1986));
22 *Gerritsen v. Warner Bros. Entm’t Inc.*, 112 F. Supp. 3d 1011, 1034 (C.D. Cal. 2015), and
23 “may take notice of proceedings in other courts, both within and without the federal
24 judicial system, if those proceedings have a direct relation to matters at issue.” *Bias v.*
25 *Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (quoting *Bennett v. Medtronic, Inc.*, 285
26 F.3d 801, 803 n.2 (9th Cir. 2002)). Here, the Court takes judicial notice of another
27 prisoner civil rights case filed in the Southern District of California in which Defendant
28 G. Wiley, a nurse practitioner employed at RJD in 2014-2015, was also named as a
Defendant. See *Millare v. Gonzales, et al.*, S.D. Cal. Civil Case No. 3:16-cv-00487-
MMA-NLS. Service upon G. Wiley was returned unexecuted by the U.S. Marshal in that
case because Wiley is no longer employed at RJD, and no forwarding address was
provided to either the prisoner-plaintiff, or to the U.S. Marshal, by the litigation
coordinator at RJD. See ECF No. 53. Therefore, Judge Stormes directed the Deputy

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

2 [i]f a defendant is not served within 90 days after the complaint
3 is filed, the court—on motion or on its own after notice to the
4 plaintiff—must dismiss the action without prejudice against the
5 defendant or order that service be made within a specified time.
6 But if the plaintiff shows good cause for the failure, the court
7 must extend the time for service for an appropriate period.

8 FED. R. CIV. P. 4(m).

9 In cases involving a plaintiff proceeding IFP, a United States Marshal, upon order
10 of the court, serves the summons and the complaint. FED. R. CIV. P. 4(c)(3) (providing for
11 service by a United States marshal or deputy marshal “if the plaintiff is authorized to
12 proceed in forma pauperis under 28 U.S.C § 1915.”); 28 U.S.C. § 1915(d) (“The officers
13 of the court shall issue and serve all process, and perform all duties in [IFP] cases.”).
14 “[A]n incarcerated pro se plaintiff proceeding in forma pauperis is entitled to rely on the
15 U.S. Marshal for service of the summons and complaint and ... should not be penalized
16 by having his action dismissed for failure to effect service where the U.S. Marshal or the
17 court clerk has failed to perform his duties.” Walker v. Sumner, 14 F.3d 1415, 1422 (9th
18 Cir. 1994) (quoting Puett, 912 F.2d at 275), abrogated on other grounds by Sandin v.
19 Conner, 515 U.S. 472 (1995). “So long as the prisoner has furnished the information
20 necessary to identify the defendant, the marshal’s failure to effect service is
21 ‘automatically good cause.’” Walker, 14 F.3d at 1422 (quoting Sellers v. United States,
22 902 F.2d 598, 603 (7th Cir. 1990)). However, where a pro se plaintiff fails to provide the
23 Marshal with accurate and sufficient information to effect service of the summons and
24 complaint, the court’s sua sponte dismissal of the unserved defendants is appropriate.
25 Walker, 14 F.3d at 1421-22; see also Rochon v. Dawson, 828 F.2d 1107, 1110 (5th Cir.
26 1987) (noting that plaintiff “may not remain silent and do nothing to effectuate such

27 Attorney General in Millare to provide Wiley’s forwarding address confidentially to the
28 U.S. Marshal. See ECF No. 45. Service upon G. Wiley is still outstanding in that case;
but Judge Stormes has issued and served a subpoena upon Wiley’s contract employer at
the time, Maxim Healthcare, in an effort to produce Wiley’s forwarding address to the
U.S. Marshal confidentially so the Marshal may carry out his statutory duties in a timely,
efficient, and cost-effective fashion. See id., ECF Nos. 71, 92.

1 service”; rather, “[a]t a minimum, a plaintiff should request service upon the appropriate
2 defendant and attempt to remedy any apparent defects of which [he] has knowledge.”).

3 The Court enjoys broad discretion under Rule 4(m) to extend time for service even
4 without a showing of good cause. In re Sheehan, 253 F.3d 507, 513 (9th Cir. 2001);
5 Mann v. American Airlines, 324 F.3d 1088, 1090 (9th Cir. 2003) (holding that district
6 court may, under the broad discretion granted by FED. R. CIV. P. 4(m), extend time for
7 service retroactively after the 120-day service period has expired).

8 Here, the Court finds Plaintiff has provided information “necessary to sufficiently
9 identify” both Defendant G. Murphy, a Lieutenant Appeals Examiner in Sacramento, and
10 G. Wiley, a nurse practitioner employed at RJD in March 2015. Walker, 14 F.3d at 1422.
11 See also ECF Nos. 6, 30. Because it appears the only reason the U.S. Marshal was
12 previously unable to effect service upon Murphy was due to his position in Sacramento,
13 as opposed to RJD, and because service upon G. Wiley at RJD is also inappropriate
14 because she is no longer employed there, see Millare, S.D. Cal. Civil Case No. 16-cv-
15 00487-MMA-NLS, ECF Nos. 45, 53, 92, and so long as the privacy of both Defendant
16 *Murphy and Wiley’s* forwarding addresses can be preserved, Plaintiff is entitled to rely
17 on the U.S. Marshal to effect service upon them on his behalf. See Puett, 912 F.2d at 275.

18 The Court will therefore direct the Deputy Attorney General assigned to this case
19 to contact the Litigation Coordinator at RJD, and to ask that she provide any and all
20 forwarding addresses in his or her possession, or which are obtainable from the CDCR’s
21 personnel records, or in the possession of Management Solutions, the “point of contact”
22 for several medical specialist registries, including Maxim Healthcare, G. Wiley’s contract
23 employer, see Millare, S.D. Cal. Civil Case No. 16-cv-00487-MMA-NLS (ECF Nos. 45,
24 53, 71, 92, and to forward those addresses to the U.S. Marshal in a confidential

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1 memorandum indicating that the summons and Plaintiff's Amended Complaint (ECF No.
2 30) is to be served upon them at the addresses provided. Should RJD's Litigation
3 Coordinator or the CDCR indicate to the Deputy Attorney General that they are not in
4 possession of G. Wiley's forwarding address due to her contractual employment through
5 Maxim Healthcare or another health care registry, the U.S. Marshal may effect service
6 upon G. Wiley at whatever confidential forwarding address already provided for her in
7 response to the subpoena issued and served upon Maxim Healthcare in Millare, S.D. Cal.
8 Civil Case No. 16-cv-0487-MMA-NLS.²

9 **IV. Conclusion and Orders**

10 Based on the foregoing, and finding good cause therefor, the Court:

11 1) **DENIES** Plaintiff's duplicative Motion for Leave to Amend (ECF No. 29)
12 as moot due to the timely filing of his Amended Complaint (ECF No. 30);

13 2) **DIRECTS** the Clerk of Court to issue a summons as to Plaintiff's Amended
14 Complaint (ECF No. 30) upon Defendants G. Murphy and G. Wiley pursuant to Fed. R.
15 Civ. P. 4(a), (b), and forward it, together with two blank U.S. Marshal Form 285s for
16 Defendants Murphy and Wiley **to the U.S. Marshal**, together with two certified copies of
17 Plaintiff's Amended Complaint (ECF No. 31), a copy of the April 5, 2017 Order
18 Granting IFP and Directing U.S. Marshal Service (ECF No. 4), and a copy of the Court's
19 August 7, 2017 Order Granting Plaintiff's Motion for Extension of Time (ECF No. 28).

20 3) **DIRECTS** the Deputy Attorney General assigned to this case to determine
21 from the Litigation Coordinator at RJD, Management Solutions, and/or Maxim
22 Healthcare, the forwarding addresses in their records for Defendants G. Murphy, a Lt.

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24 ² Pursuant to this confidential service Order, neither Defendant Murphy nor Defendant
25 Wiley's addresses shall appear on any U.S. Marshal Form 285, be made accessible to
26 Plaintiff under any circumstances, or be made part of the Court's record. While a "state
27 prison official may be justifiably reluctant to provide employee addresses to a prisoner ...
28 due to security concerns, it can hardly claim the same reluctance in providing the
information to a federal law enforcement agency." *Graham v. Satkoski*, 51 F.3d 710, 713
(7th Cir. 1995).

1 Appeals Examiner, and G. Wiley, a nurse practitioner employed at RJD in March 2015,
2 and to provide those addressed to the U.S. Marshal in a confidential memorandum
3 indicating that the summons and Plaintiff's Amended Complaint (ECF No. 30) are to be
4 served upon them at those addresses, as soon as possible;

5 4) **DIRECTS** the U.S. Marshal, pursuant to FED. R. CIV. P. 4(c)(3), (m) and 28
6 U.S.C. § 1915(d), to within 30 days of receiving Defendant Murphy and Wiley's
7 confidential forwarding addresses, effect service of Plaintiff's Amended Complaint (ECF
8 No. 30) and summons upon Defendants Murphy and Wiley. All costs of service will be
9 advanced by the United States pursuant to the Court's April 5, 2017 Order granting
10 Plaintiff leave to proceed IFP and directing service pursuant to 28 U.S.C. § 1915(d) and
11 FED. R. CIV. P. 4(c)(3) (ECF No. 4), and its August 7, 2017 Order granting Plaintiff's
12 Motion for Extension of Time to serve Defendants Murphy and Wiley pursuant to FED.
13 R. CIV. P. 4(m) (ECF No. 28). The U.S. Marshal shall return proof of that service, and/or
14 any attempts of unsuccessful service as to Murphy and Wiley within 30 days of receipt of
15 Murphy and Wiley's addresses, but shall not include the confidential forwarding
16 addresses on the U.S. Marshal Form 285s *to be filed in the Court's docket*; and

17 5) **GRANTS** Defendants Covell, Frost, Lopez, Paramo, Salinas, Sanchez,
18 Stratton, Williams, and Zamora's Ex Parte Application for Extension of Time to File a
19 Responsive Pleading to Plaintiff's Amended Complaint (ECF No. 33). Defendants must
20 file their response within 30 days after the U.S. Marshal files a proof of service as to both
21 Defendants Murphy and Wiley, but in no event later than **Friday, November 3, 2017**.

22 **IT IS SO ORDERED.**

23 Dated: September 7, 2017

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26 Hon. Barry Ted Moskowitz, Chief Judge
27 United States District Court
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