

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARCUS TERRELL ROSS,

Plaintiff,

v.

SNOHOMISH COUNTY, et al.,

Defendant.

CASE NO. C13-1467JLR

ORDER ON MOTION TO
DISMISS

Before the court is Defendant Snohomish County’s motion to dismiss the complaint in this civil rights case. (Mot. (Dkt. # 7).) Plaintiff Marcus Ross is suing Defendants Snohomish County, John Doe Snohomish County Police Officers, and Does 6-10, alleging that they discriminated against him on account of his race by arresting him on two separate occasions. (See Am. Compl. (Dkt. # 2).) The County moves to dismiss the complaint on numerous grounds, only one of which is relevant to this order. The relevant ground is the County’s argument that service of process is insufficient. (See Mot.)

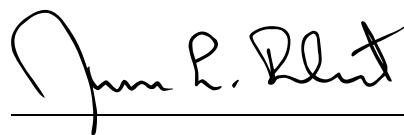
1 The County is correct that service of process is insufficient in this case. Under
2 Federal Rule of Civil Procedure¹ 4(c)(2), a summons and complaint may be served by
3 “any person who is at least 18 years old and not a party . . .” to the case. If a party to the
4 case serves the complaint, service is ineffective. *Id.*; *see also Grimes v. Barber*, No. C
5 12-3111 CW, 2013 WL 752633, at *3 (N.D. Cal. Feb. 27, 2013). Here, Mr. Ross filed
6 affidavits of service demonstrating that he, not anyone else, served the County. (*See*
7 *Ross Affs. of Service* (Dkt. ## 11, 12).) Mr. Ross testifies that he personally served the
8 County by hand-delivering the summons and complaint to the Snohomish County
9 Auditor’s Office. (*Id.*) This is not a valid form of service because service must be made
10 by a non-party. Fed. R. Civ. P. 4(c)(2); *Grimes*, 2013 WL 752633, at *3.

11 Where service is insufficient, the court has discretion to either dismiss the action
12 or simply quash service and retain the case. *S.J. v. Issaquah Sch. Dist. No. 411*, 470 F.3d
13 1288, 1293 (9th Cir. 2006); *Grimes*, 2013 WL 752633, at *3. Generally, service will be
14 quashed if there is a reasonable prospect that the plaintiff will be able to serve the
15 defendant properly; otherwise, the action will be dismissed. *Grimes*, 2013 WL 752633,
16 at *3; *Crayton v. Rochester Med. Corp.*, No. 1:07-CV-01318-OWW-GSA, 2008 WL
17 3367604, at *5 (E.D. Cal. Aug. 8, 2008) (citing C. Wright & A. Miller, FEDERAL
18 PRACTICE AND PROCEDURE (1990) § 1354, at 289; *Umbenhauer v. Woog*, 969 F.2d 25,
19 30 (3d Cir. 1992)).

21
22 ¹ How service may be made is a federal question to be determined under federal law.
Henderson v. United States, 517 U.S. 654, 656 (1996).

1 Here, Mr. Ross will likely be able to serve the County. Indeed, the 120-day
2 deadline for service of process has not yet passed. *See* Fed. R. Civ. P. 4(m).
3 Accordingly, the court exercises its discretion and quashes service rather than dismissing
4 the case. *See S.J.*, 470 F.3d at 1293. Absent sufficient service, the court is without
5 personal jurisdiction to rule on the pending motion to dismiss or issue any judgment that
6 is binding on the parties. *S.E.C. v. Ross*, 504 F.3d 1130, 1138 (9th Cir. 2007) (“[I]n the
7 absence or proper service of process, the district court has no power to render any
8 judgment against the defendant’s person or property unless the defendant has consented
9 to jurisdiction or waived the lack of process.”). Accordingly, the court GRANTS IN
10 PART and DENIES IN PART the County’s pending motion to dismiss, WITHOUT
11 PREJUDICE to refiling or re-raising the same issues in the event that proper service is
12 made.

13 Dated this 26th day of November, 2013.

14
15 

16 JAMES L. ROBART
17 United States District Judge
18
19
20
21
22