

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LEE PATRICK JOHNSON,

Plaintiff,

V.

MICHAEL ALLEN, et al.,

Defendants.

CASE NO. C17-389-JLR-BAT

ORDER EXTENDING TIME FOR SERVICE

For the reasons set forth herein, the Court is extending Plaintiff Lee Patrick Johnson's deadline to serve the defendant identified as "Captain Cline."

BACKGROUND

On May 19, 2017, the Court directed service of the summons and amended complaint on Defendants Sgt. Michael Allen, Captain Cline, and Deputy Prosecuting Attorney Joseph Marchesano¹. Dkt. 22. On May 30, 2017, the summons and complaint for Captain Cline were returned as undeliverable; marked “NOT HERE.” Dkt. 23. On June 1, 2017, the Court directed Defendants Allen and Marchesano to provide, in the form of a confidential memo, Defendant Cline’s forwarding address. Dkt. 24. Defendants advised that they possess no forwarding address for Captain Cline, no such person is now nor was employed by the DAJD during the

¹ Defendants Allen and Marchesano were served and filed an Answer to the Amended Complaint. Dkt. 33.

1 time frames alleged in Plaintiff's complaint, and a review of a list of current and past DAJD
2 employees revealed no employees with the last name of "Cline." Dkt. 28.

3 On June 19, 2017, the Court directed Plaintiff to provide a current service address for
4 Captain Cline. Dkt. 29. Plaintiff was cautioned that his failure to comply with the Court's Order
5 would result in a recommendation that Defendant Cline be dismissed from this case for failure to
6 prosecute. *Id.* Following an extension of time (Dkt. 36), Plaintiff provided three addresses for
7 Captain Cline. Dkt. 38. All three addresses are offices of the DAJD. *Id.* On September 13,
8 2017, the Court directed service on Captain Cline at the three addresses provided by Plaintiff.
9 Dkt. 39. All three mailings were returned as undeliverable, marked "Not Here" (Dkt. 40);
10 "Need Person, Full Names" (Dkt. 41); and "Not Here" (Dkt. 42).

11 Plaintiff's allegations against Captain "Cline" are based on a June 21, 2016 grievance
12 response: "Sgt. Allen's response to you is correct. Your non-legal mail (both incoming and
13 outgoing) will continue to be screened. Inmates have no expectation of privacy in King County
14 Detention facilities." Dkt. 1-2. It appears that the staff person who signed the grievance is a
15 captain as "CPT" precedes the last name, but it is entirely unclear whether the last name is in fact
16 "Cline."

17 DISCUSSION

18 As Mr. Johnson has previously been advised, a proper summons and complaint on each
19 named defendant for the Court to have jurisdiction over that defendant. Fed. R. Civ. P. 4;
20 *Travelers Cas. & Sur. Co. of Am. v. Brenneke*, 551 F.3d 1132, 1135 (9th Cir. 2009) ("A federal
21 court is without personal jurisdiction over a defendant unless the defendant has been served in
22 accordance with Fed. R. Civ. P. 4."). A plaintiff proceeding *in forma pauperis* still bears the
23 burden of providing accurate and sufficient information to effect service of the summons and

1 complaint. When a pro se plaintiff fails to provide the court with accurate and sufficient
2 information to effect service of the summons and complaint, the Court's *sua sponte* dismissal of
3 the unserved defendant is appropriate. *Walker v. Sumner*, 14 F.3d 1415, 1421-22 (9th Cir. 1994)
4 (quoting *Puett v. Blanford*, 912 F.2d 270, 275 (9th Cir. 1990)), *abrogated on other grounds by*
5 *Sandin v. Connor*, 515 U.S. 472 (1995). If a defendant is not served within 90 days after the
6 complaint is filed, the Court, on motion or on its own after notice to the plaintiff, must dismiss
7 the action without prejudice against that defendant or order that service be made within a
8 specified time. Fed. R. Civ. P. 4(m).

9 It has been more than 90 days since the amended complaint was filed, and all attempts to
10 serve "Captain Cline" since that time have been unsuccessful. However, as it appears that Mr.
11 Johnson may have misidentified the person who signed the grievance appeal (see Dkt. 1-2 at 2),
12 the Court is extending the deadline for service so that Mr. Johnson may take steps to identify the
13 staff person, *e.g.*, by serving an interrogatory or request for production on the existing defendants
14 to provide information as to the staff person's identity.

15 Accordingly, it is **ORDERED**:

16 (1) Plaintiff's deadline to serve the amended complaint on "Captain Cline" or the
17 individual identified as the staff person who signed the grievance appeal on June 2, 2016, is
18 extended to **November 29, 2017**. If Plaintiff fails to take steps to determine the identity of the
19 "Captain defendant," the Court will recommend that this unidentified defendant be dismissed.

20 (2) The Clerk is directed to send a copy of this Order to the parties.

21 **DATED** this 4th day of October, 2017.

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23 
BRIAN A. TSUCHIDA
United States Magistrate Judge