

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA**

Aerick Wayne Shorty v. J. Hill, et al.

Case No. 25cv656-RBM (MSB) · No. 25cv656-RBM (MSB) · Decided July 29, 2025

SUMMARY

The United States District Court for the Southern District of California denied without prejudice a state prisoner’s request for service by a U.S. Marshal because he was not proceeding in forma pauperis and had not attempted service by other authorized means. The court reissued summonses for the remaining defendants and directed the Clerk to provide waiver-of-service forms and copies of the complaint. The court extended the service deadline to October 1, 2025.

OPINION

2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 SOUTHERN DISTRICT OF CALIFORNIA
9 10 AERICK WAYNE SHORTY, Case No.: 25cv656-RBM (MSB) 11 Plaintiff, ORDER
DENYING REQUEST FOR SERVICE 12 v. BY A U.S. MARSHAL [ECF NO. 8] 13 J. HILL, et
al., 14 Defendants. 15 16 17 I. BACKGROUND Plaintiff AERICK WAYNE SHORTY is a state
prisoner proceeding pro se in this civil 18 rights action brought pursuant to 42 U.S.C. § 1983.

(See ECF No. 1.) Plaintiff is not 19 proceeding in forma pauperis (“IFP”) pursuant to 28 U.S.C. §
1915(a)—he has instead 20 paid the \$405 civil and administrative filing fee required by 28 U.S.C.
§ 1914(a). (See ECF 21 No. 4, Receipt No. 160348.)

On July 2, 2025, the Court screened Plaintiff’s Complaint as 22 required by 28 U.S.C. § 1915A
and found that Plaintiff alleged plausible First and Eighth 23 Amendment claims. (See ECF No. 5
at 6–7 (hereinafter, “Screening Order”).)

After 24 dismissing certain claims and defendants, the Court directed the Clerk to issue a 25
summons upon Defendants A. Ramirez and E. Estrada (collectively, “Defendants”) under 26 Fed.
R. Civ. P. 4(b). (Id. at 7–8.)

The Court also ordered Plaintiff to file proof of service 27 2 failure to do so would result in his
case being dismissed without prejudice for failing to 3 timely prosecute pursuant to Fed. R. Civ. P.
4(m). (Id.) 4 Presently before the Court is Plaintiff’s request for service by a U.S. Marshal. (ECF 5
No. 8.)

In it, Plaintiff explains that he is “willing and able to pay the process server” but 6 is “confined at
R.J. Donovan, where the events giving rise to the action occurred and the 7 Defendants are
employed, making it difficult to serve the litigation coordinator on their 8 behalf.” (Id. at 1.) 9 II.

REQUEST FOR U.S. MARSHAL SERVICE 10 Generally, a plaintiff who files a civil action and pays the filing fee is responsible 11 for effectuating service of process.

See *Boudette v. Barnette*, 923 F.2d 754, 757 (9th Cir. 12 1991). Rule 4(c)(3) of the Federal Rules of Civil Procedure provides that, “[a]t the 13 plaintiff’s request, the court may order that service be made by a United States marshal 14 or deputy marshal or by a person specially appointed by the court.” Fed. R. Civ. P. 15 4(c)(3). “In exercising this discretion, courts have been mindful that Congress amended 16 Rule 4 ‘primarily to relieve United States marshals of the burden of serving summonses 17 and complaints in private civil actions.’” *Bax v. Executive Office for U.S. Attorneys*, 216 18 F.R.D.

4, 4 (D.D.C. 2003) (quoting *Lovelace v. Acme Mkts., Inc.*, 820 F.2d 81, 83 (3d Cir. 19 1987)). 20 According to the Congressional record, “the plaintiff is expected first to seek 21 service by private means whenever feasible rather than impose the burden on the 22 Marshals Service;” thus, court orders directing U.S. Marshal service “should not be 23 issued unless they really are necessary.” 96 F.R.D.

81, 127 (1983). Courts in this district 24 have held that a plaintiff requesting service by the U.S. Marshal must first attempt 25 service by other means authorized by Rule 4. See, e.g., *Raiser v. United States Dist. Ct. 26 for S. Dist. of California*, No. 20-CV-1490 TWR (AGS), 2021 WL 4895217, at *2 (S.D. Cal. 27 Feb. 26, 2021) (denying motion for U.S. Marshal service where plaintiff was not 2 other means”).

3 Plaintiff has not articulated any attempt at service. Instead, he states that he is 4 willing and able to pay for service, but his confinement at R.J. Donovan is an obstacle. 5 (ECF No. 8 at 1.) Although the Court recognizes that Plaintiff’s incarceration poses some 6 barriers to properly serving his complaint, his status is not an absolute bar to properly 7 serving the Defendants.

See, e.g., *Cathy v. Palma*, No. 322CV01565GPCJLB, 2023 WL 8 322495, at *3 (S.D. Cal. Jan. 19, 2023) (denying motion for U.S. Marshal service where 9 plaintiff was not proceeding IFP and did not articulate what attempts he had taken to 10 serve defendants by alternate means before seeking assistance from the Marshal).

For 11 example, Plaintiff can certainly attempt to have a qualified non-party serve Defendants 12 without the Court’s intervention (see Fed. R. Civ. P. 4(c)(2)), and he must explain any 13 such attempt before renewing his request. 14 Because Plaintiff is not proceeding IFP and has not discussed any steps he has 15 taken to effectuate service, the Court DENIES Plaintiff’s Request for Service by a U.S. 16 Marshal without prejudice to any future requests.1 17 III.

TIME TO EFFECTUATE SERVICE 18 The Court originally ordered Plaintiff to personally serve Defendants within thirty 19 days of the Screening Order, which means Plaintiff would have to effectuate service by 20 July 31, 2025. Plaintiff made this motion for service by a U.S. Marshal

within eighteen 21 days of the Order, but the Court had not entered it on the CM/ECF system until July 22, 22 2025.

(See ECF No. 8.) Because the Court is denying Plaintiff's request for U.S. Marshal 23 service, it seems unlikely that Plaintiff will have served Defendants by the current 24 deadline. The Court recognizes that Fed. R. Civ. P. 4(m) allows Plaintiff ninety days to 25 effectuate service, and case law generally tolls that deadline until after screening, 26 27 1 || pursuant to 28 U.S.C. § 1915A, is complete.

(See Screening Order at 3 n. 3 (citing *Butler 2 Nat'l Cmty. Renaissance of California*, 766 F.3d 1191, 1204 n.8 (9th Cir. 2014).) 3 Accordingly, Plaintiff shall have ninety days from the Screening Order to effectuate 4 service, which shall be by October 1, 2025. 5 Because Plaintiff still has about two months to either serve Defendants on his 6 || own or renew his Request after he has made a sufficient attempt at service, the Court 7 || will not provide any further extensions at this time.

However, should Plaintiff eventually 8 || need an extension, Plaintiff must timely request it, or his claims may be dismissed 9 || without prejudice, as provided by Fed. R. Civ. P. 4(m). 10 IV. CONCLUSION 11 1. Plaintiff's Request for Service by a U.S. Marshal is DENIED without 12 || prejudice.

To assist Plaintiff in service of process in this case, the Court DIRECTS the 13 Clerk of the Court to re-issue a summons upon Defendants A. Ramirez and E. Estrada 14 || under Fed. R. Civ. P. 4(b), and forward them to Plaintiff together with three copies of his 15 Complaint [ECF No. 1] and three blank AO 399 Waiver of Service of Summons Forms so 16 || that Plaintiff may notify Defendants that an action has been commenced against them 17 || and request each Defendant waive personal service pursuant to Fed.

R. Civ. P. 4(d). 18 2. The Court notes that if a Defendant located within the United States fails, 19 || without good cause, to sign and return a waiver that Plaintiff properly requests, the 20 || Court may impose upon that Defendant the expenses later incurred in making personal 21 || service. See 28 U.S.C. § 1915(d); Fed. R. Civ. P. 4(c)(3), (d)(2). 22 IT IS SO ORDERED.

23 Dated: July 29, 2025 = _2 3s Honorable Michael S. Berg United States Magistrate Judge 26 27 28