

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Gonzalez v. Akhavan, et al.

Gonzalez · No. 1:23-cv-01506-JLT-BAM (PC) · Decided February 28, 2025

SUMMARY

The United States District Court for the Eastern District of California ordered Plaintiff Jaime Cesar Gonzalez to show cause why Defendant Martinez should not be dismissed without prejudice for failure to provide sufficient information to effect service. The court allowed thirty days for Plaintiff to provide additional locating information and warned that failure to respond or show cause would result in dismissal under Federal Rule of Civil Procedure 4(m).

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Barbara A. McAuliffe
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	February 28, 2025
DOCKET	1:23-cv-01506-JLT-BAM (PC)
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff, a state prisoner proceeding pro se and in forma pauperis, brought a 42 U.S.C. § 1983 action. After the United States Marshal was unable to serve Defendant Martinez, the court issued an order to show cause why Martinez should not be dismissed without prejudice for failure to provide sufficient information to effect service.
STANDARD OF REVIEW	Under Federal Rule of Civil Procedure 4(m), the court may dismiss an unserved defendant without prejudice or order service within a specified time after notice to the plaintiff; dismissal is appropriate where a pro se plaintiff fails to provide accurate and sufficient information to effect service.
PRECEDENTIAL VALUE	Unpublished district court order; precedential status is not specified in the opinion.

TOPICS

- service of process
- prisoners rights
- section 1983
- civil procedure

PRACTICE AREAS

civil rights

civil procedure

prisoner litigation

QUESTIONS PRESENTED

1. Whether the court should require Plaintiff to show cause under Federal Rule of Civil Procedure 4(m) why Defendant Martinez should not be dismissed without prejudice after unsuccessful service.
2. Whether an incarcerated pro se plaintiff proceeding in forma pauperis provided sufficient information to permit the United States Marshal to locate and serve Defendant Martinez.

HOLDINGS

1. When an incarcerated pro se plaintiff proceeding in forma pauperis fails to provide accurate and sufficient information necessary for the United States Marshal to locate and serve a defendant, dismissal of that unserved defendant without prejudice under Federal Rule of Civil Procedure 4(m) is appropriate, subject to notice and an opportunity to provide additional information.

KEY QUOTATIONS

“However, where a pro se plaintiff fails to provide the Marshal with accurate and sufficient information to effect service of the summons and complaint, the Court’s sua sponte dismissal of the unserved defendant is appropriate.” (at 2)

FACTUAL BACKGROUND

Plaintiff alleged that correctional officer Martinez participated in forcing him into van transport after back surgery, in violation of the Eighth Amendment. The court provided the Marshal with identifying information concerning Martinez, but Martinez had retired from CDCR and could not be contacted at his last known address or telephone number. Personal service at the last known address also failed because the current homeowner stated that they had lived there since 2016 and Martinez did not live there.

PROCEDURAL HISTORY

Plaintiff's first amended complaint proceeded against several correctional officials for alleged deliberate indifference to medical care. The court ordered service on Defendant Martinez through its E-Service pilot program, but the defendant could not be located using the information provided or CDCR's last known contact information. The Marshal filed an unexecuted return of service, and the court gave Plaintiff thirty days to provide additional locating information or show cause why Martinez should not be dismissed under Federal Rule of Civil Procedure 4(m).

DISPOSITION

other

CASES CITED

- Puett v. Blandford, 912 F.2d 270, 275 (9th Cir. 1990)
- Walker v. Sumner, 14 F.3d 1415, 1421–22 (9th Cir. 1994)
- Sandin v. Connor, 515 U.S. 472, 115 (1995)

OPINION

(PC) Gonzalez v. Akhavan

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 JAIME CESAR GONZALEZ, Case No. 1:23-cv-01506-JLT-BAM (PC) 12 Plaintiff,
ORDER TO SHOW CAUSE WHY

DEFENDANT MARTINEZ SHOULD NOT

13 v. BE DISMISSED FROM THIS ACTION FOR

FAILURE TO PROVIDE SUFFICIENT

14 AKHAVAN, et al., INFORMATION TO EFFECTUATE
SERVICE

15 Defendants. (ECF No. 25) 16

THIRTY (30) DAY DEADLINE

17 18 Plaintiff Jaime Cesar Gonzalez (“Plaintiff”) is a state prisoner proceeding pro se and in 19
forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on 20
Plaintiff’s first amended complaint for deliberate indifference to medical care against Defendants
21 Lt. Jane Doe, correctional officer John Doe, and correctional officer Martinez for forcing
Plaintiff 22 into the van transport following back surgery, in violation of the Eighth Amendment.
23 On November 21, 2024, the Court issued an order directing service on Defendant 24 Martinez
under the Court’s E-Service pilot program for civil rights cases for the Eastern District 25 of
California.¹ (ECF No. 25.) The order included the following information regarding Defendant 26
Martinez: “Martinez, Correctional Officer; van transport from Bakersfield Adventist (or 27 1 At
the time, the Court did not find service appropriate for Defendants Jane Doe and John Doe because
the U.S. 28 Marshal cannot serve a Doe Defendant. 1 Adventist) Hospital to California City
Correctional Facility; on or about April 27, 2023.” (Id. at 2 2.) On December 11, 2024, the Court
received information that Defendant Martinez had retired 3 from CDCR and could not be
contacted at his last known address or phone number. Service 4 documents were forwarded to the
United States Marshals Service. On December 13, 2024, the 5 United States marshal filed a return
of service unexecuted as to Defendant Martinez. (ECF No. 6 28.) 7 Federal Rule of Civil
Procedure 4(m) provides as follows: 8 If a defendant is not served within 120 days after the
complaint is filed, the 9 court—on motion or on its own after notice to the plaintiff—must dismiss
the action without prejudice against that defendant or order that service be made 10 within a

specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. 11 12 Fed. R. Civ. P. 4(m). 13 In cases involving a plaintiff proceeding in forma pauperis, the Marshal, upon order of the 14 court, shall serve the summons and the complaint. Fed. R. Civ. P. 4(c)(3). “[A]n incarcerated pro 15 se plaintiff proceeding in forma pauperis is entitled to rely on the U.S. Marshal for service of the 16 summons and complaint, and . . . should not be penalized by having his or her action dismissed 17 for failure to effect service where the U.S. Marshal or the court clerk has failed to perform the 18 duties required of each of them” Puett v. Blandford, 912 F.2d 270, 275 (9th Cir. 1990). “So 19 long as the prisoner has furnished the information necessary to identify the defendant, the 20 marshal’s failure to effect service is ‘automatically good cause’” Walker v. Sumner, 14 F.3d 21 1415, 1422 (9th Cir. 1994), abrogated on other grounds by Sandin v. Connor, 515 U.S. 472, 115 22 (1995). However, where a pro se plaintiff fails to provide the Marshal with accurate and 23 sufficient information to effect service of the summons and complaint, the Court’s sua sponte 24 dismissal of the unserved defendant is appropriate. Walker, 14 F.3d at 1421–22. 25 Here, the U.S. Marshal attempted to electronically serve Defendant Martinez with the 26 information that Plaintiff provided. However, the Court was informed that Defendant Martinez 27 could not be located with the information provided or the last known phone number or address on 28 file with CDCR. The U.S. Marshal then attempted personal service at the last known address for 1 Defendant Martinez, but was informed by the new home owner that they have lived at that 2 address since 2016, and Defendant Martinez does not live there. (ECF No. 28.) Plaintiff 3 therefore has not provided sufficient information to locate Defendant Martinez for service of 4 process. If Plaintiff is unable to provide the Marshal with the necessary information to locate this 5 defendant, Defendant Martinez shall be dismissed from this action, without prejudice. 6 Pursuant to Rule 4(m), the Court will provide Plaintiff with the opportunity to show cause 7 why Defendant Martinez should not be dismissed from the action at this time. Plaintiff may 8 respond to this order by providing additional information that will assist the Marshal in locating 9 Defendant Martinez for service of process. 10 Based on the foregoing, it is HEREBY ORDERED that: 11 1. Within thirty (30) days from the date of service of this order, Plaintiff shall show cause 12 why Defendant Martinez should not be dismissed from this action; and 13 2. The failure to respond to this order or the failure to show cause will result in the 14 dismissal of any unidentified defendant from this action, due to Plaintiff’s failure to 15 serve process pursuant to Federal Rule of Civil Procedure 4(m). 16 IT IS SO ORDERED. 17 18 Dated: February 28, 2025 /s/ Barbara A. McAuliffe _
UNITED STATES MAGISTRATE JUDGE
19 20 21 22 23 24 25 26 27 28