

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

OPINION

(PC) Gonzalez v. Akhavan

PER CURIAM.

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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

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