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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

JEFFREY BRYAN NORSWORTHY,

No. CIV S-09-2989-LKK-CMK-P

Plaintiff,

vs.

FINDINGS AND RECOMMENDATIONS

RIVERS,

Defendant.

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Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983.

This action proceeds on the amended complaint (Doc. 18), filed on May 21, 2010. Rivers is the only defendants named in the amended complaint. On July 23, 2010, the court determined that service of the complaint was appropriate and, on August 5, 2008, plaintiff submitted the paperwork necessary for service by the United States Marshal. On November 16, 2010, the United States Marshal was directed to effect service on defendant Rivers. On March 29, 2011, service of process was returned unexecuted with the following notations: "2-10-11 Per facility – resigned in Dec. '09" and "3-21-11 Per CDC locator 4 c/o w/ L. name." On April 14, 2011, plaintiff was directed to provide the court with additional information in order to serve

1 defendant Rivers. Plaintiff was advised that the failure to effect timely service could result in  
2 dismissal of the action pursuant to Federal Rule of Civil Procedure 4(m). Plaintiff was directed  
3 to comply within 60 days.

4           To date, plaintiff has not provided the court with any additional information.  
5 Instead, plaintiff has filed two motions: (1) a motion for appointment of counsel for the purpose  
6 of assisting him in locating defendant Rivers for service; and (2) a motion for judicial  
7 intervention with respect to locating defendant Rivers. The court finds that it is not appropriate  
8 to grant either request. Service of process was returned unexecuted because four current or  
9 former correctional officers with the California Department of Corrections and Rehabilitation  
10 share the last name "Rivers." No amount of judicial intervention or professional legal assistance  
11 from appointed counsel will aid plaintiff in more specifically identifying the person plaintiff  
12 alleges to have violated his constitutional rights. It is incumbent on plaintiff, who was allegedly  
13 wronged by a particular correctional officer, to be able to identify who that person was and to  
14 provide that information in the operative pleading so as to put the correct person on notice that he  
15 or she is a defendant in this case.

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1 Based on the foregoing, the undersigned recommends that:

- 2 1. This action be dismissed without prejudice pursuant to Federal Rule of  
3 Civil Procedure 4(m) for failure to effect timely service of process;  
4 2. All pending motions be denied as moot; and  
5 3. The Clerk of the Court be directed to enter judgment of dismissal and  
6 close this file.

7 These findings and recommendations are submitted to the United States District  
8 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days  
9 after being served with these findings and recommendations, any party may file written  
10 objections with the court. Responses to objections shall be filed within 14 days after service of  
11 objections. Failure to file objections within the specified time may waive the right to appeal.  
12 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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14 DATED: July 5, 2011

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16 **CRAIG M. KELLISON**  
17 UNITED STATES MAGISTRATE JUDGE  
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