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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MARSHA BRANDON,)	NO. CV 13-7613-PSG(E)
)	
Plaintiff,)	
)	
v.)	REPORT AND RECOMMENDATION OF
)	
LOS ANGELES COUNTY SHERIFF)	UNITED STATES MAGISTRATE JUDGE
DEPARTMENT "DEPUTY MORALES,")	
)	
Defendant.)	
)	

This Report and Recommendation is submitted to the Honorable Phillip S. Gutierrez, United States District Judge, pursuant to 28 U.S.C. section 636 and General Order 05-07 of the United States District Court for the Central District of California.

PROCEEDINGS

Plaintiff, a state prisoner, filed a "1st Amended . . . Civil Rights Complaint" ("First Amended Complaint") on November 26, 2013. The First Amended Complaint names "Deputy Morales" as the sole Defendant.

1 On December 2, 2013, the Court ordered the United States Marshal
2 to serve the First Amended Complaint on "Deputy Morales." On May 6,
3 2014, the Court filed a Minute Order indicating that the Marshals
4 Service had advised the Court that Plaintiff had failed to provide
5 information or documentation necessary to effect service. The Minute
6 Order required Plaintiff to show cause, within thirty (30) days of
7 May 6, 2014, why the action should not be dismissed for failure to
8 prosecute.

9
10 Plaintiff's only timely response to the Court's May 6, 2014
11 Minute Order was a one page declaration, filed May 28, 2014. In this
12 declaration, Plaintiff states that she does not know how to contact
13 "Deputy Morales." The Court observes that in Brandon v. Los Angeles
14 County Sheriff Dept, et al., No. CV 12-8288-JSL(E), the Court
15 dismissed a prior civil rights action in which Plaintiff named "Deputy
16 Morales" as a Defendant but failed to provide sufficient information
17 or documentation to effect service on "Deputy Morales."

18 19 DISCUSSION

20
21 This action should be dismissed without prejudice. "An
22 incarcerated pro se plaintiff, proceeding in forma pauperis, is
23 entitled to rely on the marshal for service and should not be
24 penalized by having his action dismissed for failure to effect service
25 where the marshal has failed to perform his duties. Puett v.
26 Blandford, 912 F.2d 270, 275 (9th Cir. 1990). Nevertheless, a
27 plaintiff relying upon the U.S. Marshal for service must provide the
28 necessary information and documents to effectuate service. Id."

1 Friday v. United States Dep't of Justice, 1994 WL 48956 *1 (D. Or.
2 Feb. 7, 1994). In the present case, the Marshal has attempted to
3 perform his duties, but Plaintiff has not provided the Marshal with
4 the necessary information to effectuate service.

5
6 Rule 4(m) of the Federal Rules of Civil Procedure requires the
7 Court to extend the 120 day time frame for service if a plaintiff
8 shows good cause for the failure to serve. "At a minimum, 'good
9 cause' means excusable neglect." Boudette v. Barnette, 923 F.2d 754,
10 756 (9th Cir. 1991). Here, Plaintiff has not shown any good cause for
11 the failure of service. Plaintiff has been attempting to sue "Deputy
12 Morales" since 2012, but despite the passage of many months and the
13 dismissal of a prior action, Plaintiff has failed to obtain
14 identifying information sufficient to effect service on "Deputy
15 Morales."

16
17 A court has "broad discretion" to extend the time for service
18 under Rule 4(m), even absent a showing of good cause. See Efaw v.
19 Williams, 473 F.3d 1038, 1040-41 (9th Cir. 2007); see also United
20 States v. 2,164 Watches, More or Less, Bearing a Registered Trademark
21 of Guess?, Inc., 366 F.3d 767, 773 (9th Cir. 2004) (Rule 4(m) gives
22 courts "leeway to preserve meritorious lawsuits despite untimely
23 service of process"). A court may consider various factors including
24 prejudice to the defendant, actual notice, a possible limitations bar,
25 and eventual service. Efaw v. Williams, 473 F.3d at 1041. Any such
26 dismissal should be without prejudice. See id. at 772.

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1 Here, the record shows no basis for further extending the time
2 for service. To the contrary, the record suggests that further
3 extending the time for service would be an idle act. Service on the
4 Defendant evidently cannot be effected without more specific
5 identifying information, and Plaintiff has proven unwilling or unable
6 to provide such information. Accordingly, dismissal without prejudice
7 is appropriate. Id.; see Walker v. Sumner, 14 F.3d 1415, 1422 (9th
8 Cir. 1994), abrogated on other grounds, Sandin v. Conner, 515 U.S. 472
9 (1995) (it is the plaintiff/prisoner's responsibility to provide the
10 Marshals Service with sufficient information with which to effect
11 service); accord Brush v. Harper, 2009 WL 256380, at *1 (E.D. Cal.
12 Feb. 3, 2009), adopted, 2009 WL 902265 (E.D. Cal. April 1, 2009);
13 Schrubb v. Tilton, 2009 WL 113022, at *2 (N. D. Cal. Jan. 16, 2009).

14
15 **RECOMMENDATION**

16
17 For all of the foregoing reasons, IT IS RECOMMENDED that the
18 Court issue an Order: (1) accepting and adopting this Report and
19 Recommendation; and (2) directing that Judgment be entered dismissing
20 the action without prejudice.

21
22 DATED: June 19, 2014.

23
24 _____/s/
25 CHARLES F. EICK
26 UNITED STATES MAGISTRATE JUDGE
27
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1 **NOTICE**

2 Reports and Recommendations are not appealable to the Court of
3 Appeals, but may be subject to the right of any party to file
4 objections as provided in the Local Rules Governing the Duties of
5 Magistrate Judges and review by the District Judge whose initials
6 appear in the docket number. No notice of appeal pursuant to the
7 Federal Rules of Appellate Procedure should be filed until entry of
8 the judgment of the District Court.

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