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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ALFRED BROWN,

Plaintiff,

v.

DAVID KYLE, et al.,

Defendants.

CASE NO. 1:04-cv-06539-AWI-SKO PC

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, AND DISMISSING
DEFENDANT RUFF FROM ACTION
PURSUANT TO RULE 4(M)

(Docs. 71, 81, and 83)

Plaintiff Alfred Brown, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on November 15, 2004. This action is currently proceeding on Plaintiff’s amended complaint, filed on October 23, 2006, against Defendants Kyle, Domingo, and Ruff for acting with deliberate indifference to Plaintiff’s serious medical needs, in violation of the Eighth Amendment of the United States Constitution.

This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302, and on June 8, 2011, the Magistrate Judge issued a [findings and recommendations](#) recommending that Defendant Ruff be dismissed pursuant to Federal Rule of Civil Procedure 4(m). (Doc. 83.) On September 28, 2011, after obtaining an extension of time, Plaintiff filed [objections](#) to the recommendation that Defendant Ruff be dismissed. (Doc. 95.)

Pursuant to 28 U.S.C. § 636(b)(1)(C), the Court has conducted a *de novo* review of this case. Having carefully reviewed the entire file, the Court finds the Findings and Recommendations to be supported by the record and by proper analysis. While Plaintiff’s frustration is understandable, the United States Marshal attempted to serve Defendant Ruff at her last known residential address,

1 which was provided by the California Department of Corrections and Rehabilitation, and by all
2 appearances, she no longer resides there. The avenues available in attempting to locate and serve
3 Defendant Ruff have been exhausted. *Walker v. Sumner*, 14 F.3d 1415, 1422 (9th Cir. 1994)
4 (quoting *Puett v. Blandford*, 912 F.2d 270, 275 (9th Cir. 1990)), *abrogated on other grounds by*
5 *Sandin v. Connor*, 515 U.S. 472 (1995).

6 Accordingly, it is HEREBY ORDERED that:

- 7 1. The Court adopts the findings and recommendations filed on June 8, 2011, in full;
- 8 and
- 9 2. Defendant Ruff is dismissed from this action pursuant to Federal Rule of Civil
10 Procedure 4(m).

11 IT IS SO ORDERED.

12 Dated: August 23, 2012


13 _____
14 CHIEF UNITED STATES DISTRICT JUDGE