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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

RICHARD A. OCHOTORENA,

Plaintiff,

v.

DERRAL ADAMS, et al.,

Defendants.

CASE NO. 1:05-CV-01524-LJO-DLB PC

FINDINGS AND RECOMMENDATION
RECOMMENDING DISMISSAL OF
DEFENDANT ASTORGA WITHOUT
PREJUDICE

(DOC. 101)

OBJECTIONS DUE WITHIN FOURTEEN
(14) DAYS

Plaintiff Richard A. Ochotorena (“Plaintiff”) is a prisoner in the custody of the California Department of Corrections and Rehabilitation (“CDCR”). On January 7, 2010, the Court directed the United States Marshal to re-attempt service on Defendant J. M. Astorga. On April 25, 2011, the Marshal returned the summons unexecuted. Doc. 101. As indicated by the Marshal, personal service was attempted, but no such individual could be located.

Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure,

If a defendant is not served within 120 days after the complaint is filed, the 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 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.

Fed. R. Civ. P. 4(m). 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 defendants is appropriate. *Walker v. Sumner*, 14 F.3d 1415, 1421-22 (9th Cir. 1994), *abrogated in part on other grounds*, *Sandin v. Conner*, 515 U.S. 472 (1995).

1 Based on the foregoing, it is HEREBY RECOMMENDED that Defendant Astorga be
2 dismissed from this action without prejudice for failure to effect service pursuant to Rule 4(m) of
3 the Federal Rules of Civil Procedure.

4 These Findings and Recommendation will be submitted to the United States District
5 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen**
6 **(14) days** after being served with these Findings and Recommendations, the parties may file
7 written objections with the Court. The document should be captioned “Objections to Magistrate
8 Judge’s Findings and Recommendations.” The parties are advised that failure to file objections
9 within the specified time may waive the right to appeal the District Court’s order. *Martinez v.*
10 *Ylst*, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

11 IT IS SO ORDERED.

12 **Dated: May 6, 2011**

/s/ Dennis L. Beck
13 UNITED STATES MAGISTRATE JUDGE
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