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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SID LANDAU,

Plaintiff,

v.

W. T. VOSS, et al.,

Defendants.

CASE NO. 1:07-CV-00815-AWI-DLB PC

ORDER WITHDRAWING ORDERS
(DOCS. 71, 74)

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSAL OF
DEFENDANTS ROBERTO MORISHO AND
W. T. VOSS FROM ACTION
(DOCS. 70, 73)

OBJECTIONS, IF ANY, DUE WITHIN
FOURTEEN DAYS

Plaintiff Sid Landau (“Plaintiff”) is a civil detainee proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On May 6, 2010 and August 24, 2010, the Court dismissed Defendants Roberto Morisho and W. T. Voss from this action. Docs. 71, 74. However, the Court finds that these orders are beyond the scope of jurisdiction as stated in 28 U.S.C. § 636(b). Accordingly, the Court will withdraw those orders and issue the following Findings and Recommendations.

On April 19, 2010, the United States Marshal, who must effect service of process on behalf of plaintiffs proceeding in forma pauperis, returned a summons for Defendant W. T. Voss unexecuted. Doc. 70. According to the summons, Defendant Voss is deceased. In light of the suggestion in the record of Defendant Voss’s death, the Court will dismiss Defendant Voss from this action. On August 12, 2010, the United States Marshal returned a summons for Defendant Roberto Morisho unexecuted. Doc. 73. According to the summons, the house is vacant. Thus, the address provided by Plaintiff was no longer accurate. This was the United States Marshal’s second attempt to serve process on both Defendants. Where a pro se, in forma pauperis plaintiff

1 fails to provide the Marshal with accurate and sufficient information to effect service of the
2 summons and complaint, the Court's sua sponte dismissal of the unserved defendants is
3 appropriate. *Walker v. Sumner*, 14 F.3d 1415, 1421-22 (9th Cir. 1994) (quoting *Puett v.*
4 *Blandford*, 912 F.2d 270, 275 (9th Cir. 1990)), *abrogated in part on other grounds, Sandin v.*
5 *Conner*, 515 U.S. 472 (1995).

6 Accordingly, it is HEREBY ORDERED that the Court's Orders, filed May 6, 2010 and
7 August 24, 2010, are withdrawn.

8 It is HEREBY RECOMMENDED that Defendants W. T. Voss and Roberto Morisho be
9 dismissed from this action, without prejudice, pursuant to Federal Rule of Civil Procedure 4(m).

10 These Findings and Recommendations will be submitted to the United States District
11 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen**
12 **(14) days** after being served with these Findings and Recommendations, the parties may file
13 written objections with the Court. The document should be captioned "Objections to Magistrate
14 Judge's Findings and Recommendations." The parties are advised that failure to file objections
15 within the specified time may waive the right to appeal the District Court's order. *Martinez v.*
16 *Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991).

17 IT IS SO ORDERED.

18 **Dated: December 13, 2011**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE