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

SID LANDAU,

Plaintiff,

vs.

W.T. VOSS, et al.,

Defendants.

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

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSAL OF
DOE DEFENDANTS 1 THRU 10 FOR
FAILURE TO PROVIDE INFORMATION
SUFFICIENT TO EFFECT SERVICE OF
PROCESS

(Doc. 10)

Plaintiff is a civil detainee proceeding pro se and in forma pauperis in this in this civil rights action pursuant to 42 U.S.C. § 1983. On March 7, 2008, the court issued an order requiring plaintiff to furnish information sufficient to effect service on John Doe defendants 1 thru 10, within thirty days from the date of service of the order. More than thirty days have passed and plaintiff has not responded to the court's order. (Doc. 10).

Rule 4(m) of the Federal Rules of Civil Procedure provides, in relevant part:

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).

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1 In cases involving a plaintiff proceeding in forma pauperis, a United States Marshal, upon order
2 of the court, shall serve the summons and the complaint. Fed. R. Civ. P. 4(c)(2). “[A]n incarcerated
3 pro se plaintiff proceeding in forma pauperis is entitled to rely on the U.S. Marshal for service of the
4 summons and complaint and ... should not be penalized by having his action dismissed for failure to
5 effect service where the U.S. Marshal or the court clerk has failed to perform his duties.” Walker v.
6 Sumner, 14 F.3d 1415, 1422 (9th Cir. 1994) (quoting Puett v. Blandford, 912 F.2d 270, 275 (9th Cir.
7 1990)), *abrogated on other grounds by Sandin v. Connor*, 515 U.S. 472 (1995). “So long as the prisoner
8 has furnished the information necessary to identify the defendant, the marshal’s failure to effect service
9 is ‘automatically good cause’” Walker, 14 F.3d at 1422 (quoting Sellers v. United States, 902 F.2d
10 598, 603 (7th Cir.1990)). However, where a pro se plaintiff fails to provide the Marshal with accurate
11 and sufficient information to effect service of the summons and complaint, the court’s sua sponte
12 dismissal of the unserved defendants is appropriate. Walker, 14 F.3d at 1421-22.

13 In this instance, Plaintiff was ordered to provide further information to assist the United States
14 Marshal is serving the Doe defendants, but Plaintiff has failed to do so. Accordingly, it is HEREBY
15 RECOMMENDED that pursuant to Federal Rule of Civil Procedure 4(m), Doe defendants 1 thru 10
16 be dismissed, without prejudice, based on plaintiff’s failure to provide the Marshal with information
17 sufficient to effect timely service of the summons and complaint.

18 These Findings and Recommendations will be submitted to the United States District Judge
19 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **twenty (20) days**
20 after being served with these Findings and Recommendations, the parties may file written objections
21 with the court. The document should be captioned “Objections to Magistrate Judge’s Findings and
22 Recommendations.” The parties are advised that failure to file objections within the specified time may
23 waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

24 IT IS SO ORDERED.

25 **Dated: April 23, 2009**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE